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No. ___

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

RICHARD F. ULLOA and DAVID J. ULLOA,

Petitioners,

— v. —

WESTERN SYSTEMS, INC. and LEE M. HOLMES,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the "relitigation exception" to the Anti-Injunction Act, 28 U.S.C. § 2283, permit federal courts to enjoin state court claims which could have been but were not actually litigated in a prior federal court proceeding, or are such injunctions limited to claims actually litigated and decided by the federal court?

2. Do the principles of equitable restraint set forth in *Younger v. Harris*, 401 U.S. 37 (1971) apply to requests to the federal court for permanent injunctions against purely civil state court proceedings?

   a. If not, do the general equity requirements of proof of irreparable injury and inadequacy of state legal remedies apply to such requests?

3. In granting a relitigation exception injunction, is a federal court permitted to rely on new matters first brought out at the injunction hearing but never considered in the prior federal court proceeding?

4. Is a federal post-judgment levy, execution and sale of contingent contract rights a "judgment" entitled to injunctive protection under the relitigation exception?

5. Where a party brings a federal court suit to rescind a contract, does his constructive knowledge of a potential claim under the contract bar his subsequent suit to assert the contract right?

6. Was the district court's imposition of sanctions against Petitioners warranted?

PARTIES TO THE PROCEEDING

All of the parties in the United States Court of Appeals for the Ninth Circuit are listed in the caption.

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OPINIONS BELOW

The Amended Opinion of the Ninth Circuit Court of Appeals, dated June 23, 1992 (Appendix, infra, pp. 1a - 16a) is reported in 958 F.2d 864. The Ninth Circuit's original Opinion (Appendix, infra, pp. 17a - 31a), dated March 4, 1992, was not reported.

The United States District Court for the District of Guam's Notice of Ruling and Order Granting Petitioner's Motion to Stay Proceedings, filed May 11, 1990 (Appendix, infra, pp. 33a - 53a), was not reported.

JURISDICTION

The United States Court of Appeals for the Ninth Circuit filed its original Opinion on March 4, 1992 (Appendix, infra, pp. 17a - 32a). A Petition for Rehearing, timely filed, was denied on June 18, 1992 (Appendix, infra, p. 55a). The United States Court of Appeals for the Ninth Circuit filed an Order and Amended Opinion on June 23, 1992 (Appendix, infra, pp 1a-16a).On September 14, 1992, Justice Sandra Day O'Connor, Circuit Justice for the Ninth Circuit, extended the time within which to file a Petition For a Writ of Certiorari to and including October 16, 1992.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case involves 28 U.S.C. § 2283, also known as the "Anti-Injunction Act." The Anti-Injunction Act provides:

§ 2283. Stay of State court proceedings.

> A court of the United States may not grant an injunction to stay proceedings in a State court except as previously authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT OF THE CASE

For many years this court left unanswered the question of whether the "relitigation exception" to the Anti-Injunction Act, 28 U.S.C. § 2283, applied to the entire range of res judicata claims or only to claims actually litigated and decided by a federal court's judgment. *See, e.g., Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 526 n.4 (1986). The question was thought by many to have been finally settled when this Court decided *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988) ("*Choo*"). This Court stated in *Choo:*

> The relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously was *presented to and decided by the federal court.*
>
> * * *
>
> *[A]n essential prerequisite for applying the relitigation exception is that the claims or issues* which the federal injunction insulates from litigation in state proceedings *actually have been decided by the federal court.* Moreover, Atlantic Coast Line illustrates that *this prerequisite is strict and narrow.*

Id. at 147-48 (emphasis added).

Passing on the specific claim enjoined in that case the Court in *Choo* continued at 149:

> The contention that an independent state forum non conveniens determination is pre-empted by federal maritime law, however, does little to help respondents *unless that pre-emption question was itself actually litigated and decided by the District Court. Since respondents concede that it was not, the relitigation exception cannot apply.*

Emphasis added.

Five Circuits have since read *Choo* as limiting the "relitigation exception" to claims "actually litigated and decided" by a federal court judgment. *De Cosme v. Sea Containers, Ltd.*, 874 F.2d 66 (1st Cir. 1989); *In re G.S.F. Corp.*, 938 F.2d 1467 (1st Cir. 1991); *Staffer v. Bouchard Transp. Co.*, 874 F.2d 638 (2d Cir. 1989); *Kidder, Peabody & Co., Inc. v. Maxus Energy Corp.*, 925 F.2d 556 (2d Cir. 1991); *Nationwide Mut. Ins. Co. v. Burke*, 897 F.2d 734 (4th Cir. 1990); *LCS Serv. v. Hamrick*, 925 F.2d 745 (4th Cir. 1991); *Farias v. Bexar Cy. Bd. of Trustees*, 925 F.2d 866, *cert. denied*, 112 S. Ct. 193 (1991); *American Town Center v. Hall 83 Assocs.*, 912 F.2d 104 (6th Cir. 1990). In deciding the instant case, however, the Ninth Circuit flatly disagreed. The Ninth Circuit Court said:

> We disagree with those Circuits which have concluded that the relitigation exception is limited to issues "actually litigated" in a prior court proceeding.

958 F.2d at 870; Appendix, infra, at 10a.

A. *The Prior Federal Judgments*

In 1972, Petitioners David and Richard Ulloa ("Ulloas"), and Respondents Lee M. Holmes ("Holmes") and Western Systems, Inc. ("WSI") (collectively "Holmes/WSI"), were involved in two Guam federal lawsuits. Lacking either federal question or diversity jurisdiction, the suits were nevertheless filed in federal district court because, at the time, Guam had no territorial court of its own. Then, the Guam federal district court doubled as a territorial trial court.

In the first of the two 1972 lawsuits the Ulloas, original shareholders in the corporation which is now WSI, filed suit against Holmes/WSI to rescind a stock-sale contract and to impose a constructive trust on the shares of stock transferred to Holmes pursuant to the contract. In the second suit, WSI sued the Ulloas and others for "watered stock."

The Ulloas lost both lawsuits. In the first, the trial court refused to impose a constructive trust on behalf of the original shareholders, ruling that the stock-sale contract was valid and enforceable. In the second suit, for "watered stock," the jury found in favor of the Ulloas. However, the trial court set aside the jury's verdict and entered a Judgment N.O.V. against David Ulloa for $153,000 and against Richard Ulloa for $36,000.

B. *The District Court's Injunction*

In 1989 the Ulloas filed suit against Holmes and WSI in Guam Superior Court. They sought to enforce stock rights under a subscription agreement. In addition they sought to enforce a contract upheld in the first of the two 1972 lawsuits. The contract gave the Ulloas the right to acquire additional shares of stock in WSI if certain events occurred. Holmes/WSI petitioned the federal district court to enjoin the Guam Superior Court action. The Guam U.S.

District Court had jurisdiction based on the "relitigation exception" to the Anti-Injunction Act, 28 U.S.C. § 2283.

Relying on the relitigation exception, the Guam District Court enjoined the Ulloas' territorial court lawsuits. The court acknowledged that the Ulloas' stock and contract claims were not actually raised and litigated in the prior federal proceeding. The court reasoned, nevertheless, that because the Ulloas had contested the validity of the contract in the prior federal proceeding, they "should have raised" the present claims there as well. The district court further ruled that David Ulloa's claim for additional stock under the contract was "actually litigated" when his "contract rights" were sold at an execution sale following entry of the $153,000 judgment rendered against him in the second of two prior federal lawsuits. The district court awarded sanctions against the Ulloas amounting to $28,117.06. Appendix, infra, at 5a.

C. *The Ninth Circuit's Affirmation*

The Ninth Circuit Court of Appeals affirmed the District Court's injunction. In doing so, it established several important points of law. The Ninth Circuit held:

1. The relitigation exception is not limited to matters actually litigated by a prior federal court judgment. Rather, the exception allows a federal court to enjoin all that is protected by res judicata. The court wrote:

> We therefore conclude that the relitigation exception to section 2283 [Anti-Injunction Act] allows the district court to enjoin the Guam litigation on the ground that it is barred by res judicata.

958 F.2d at 871; Appendix, infra, at 11a.

2. The *Younger v. Harris*, 401 U.S. 37 (1971), requirements of "equitable restraint" do not apply to federal injunctions against purely *civil* state court proceedings. The court wrote:

> While the *Younger* doctrine has been applied to civil pro-

> ceedings, such applications have been limited to quasi-criminal proceedings, (citation omitted), or to cases in which the state has a strong interest in enforcing its judgments....

958 F.2d at 872; Appendix, infra, at 13a (citations omitted).

3. "Irreparable injury" need not be shown for a permanent injunction to issue under the relitigation exception. The court wrote:

> It is true that a showing of irreparable injury is required for a preliminary injunction to issue, and no such showing has been made here. However, "when actual success on the merits is shown, the inquiry is over and a party is entitled to relief as a matter of law irrespective of the amount of irreparable injury which may be shown." (Citation omitted). In this case, the district court issued a permanent injunction after a trial on the merits. The cases appellants cite are inapposite, as they involve either preliminary relief or the separate "irreparable injury" requirement of *Younger v Harris*, 401 U.S. 37 (1971). Injunctive relief was therefore appropriate under traditional principles of equity.

958 F.2d at 872; Appendix, infra, at 13a - 14a.

4. A federal court may rely on new matters not raised or considered in the prior federal proceeding to decide on an injunction petition under the relitigation exception.

Without reference whatsoever to the 1972 federal court lawsuits, the court determined, on evidence presented for the first time at the injunction hearing, that the Ulloas' stock subscription was canceled due to non-payment. This sufficed to affirm the injunction against the Ulloas' stock subscription claim. The Ninth Circuit stated, without any reference to the record in either of the 1972 lawsuits, that:

> In 1971, David Ulloa exercised both his and Richard Ulloa's rights under paragraph 2. However, the Ulloas failed to pay for their stock, and MCS canceled their

> subscription in 1972 pursuant to the terms of the Agreement.

958 F.2d at 867; Appendix, infra, at 4a.

5. A federal post-judgment execution, levy and sale of contract rights constitutes a protectable "judgment" under the relitigation exception. The execution, levy and sale "actually litigates" those contract rights for relitigation exception purposes.

6. Where a party has sued to rescind a contract, his constructive knowledge of potential claims under the contract bars his subsequent suit to assert those rights. The court stated:

> The Ulloas' claim in case no. 24-72 was for the right to repurchase *all* shares of MCS (presumably pursuant to the May 24 agreement). Viewed in this light, Richard Ulloa's right to repurchase *some* shares of MCS asserted in case no. 1223-89 seems part of the same recovery sought in case no. 24-72. (Citation omitted).
>
> Richard Ulloa contends that he did not know until "recently" that the rights of first refusal had not been exercised by the other shareholders, and that he therefore could not have asserted those rights in the 1972 proceeding. Ignorance of a party does not, however, avoid the bar of res judicata unless the ignorance was caused by the misrepresentation or concealment of the opposing party. (Citation omitted).
>
> Even if ignorance were sufficient to avoid the bar, that fact would not aid the Ulloas. Evidence was presented during the federal litigation concerning which stockholders had exercised their rights to purchase MCS stock under paragraph 2. It therefore appears that the Ulloas were on notice of their potential claim for rights of first refusal.

958 F.2d at 871-72; Appendix, infra, at 12a.

REASONS FOR GRANTING THIS WRIT

I. *THERE IS A SPLIT AMONG THE CIRCUITS ON TWO ISSUES OF WIDESPREAD IMPORTANCE CONCERNING THE EXTENT TO WHICH A FEDERAL COURT CAN AND SHOULD ENJOIN STATE COURT CIVIL PROCEEDINGS BASED UPON A PRIOR FEDERAL COURT JUDGMENT*

A. *Issue One: What is the Scope of the Relitigation Exception's Authorization to Enjoin State Court Proceedings?*

Before this case, every other court of appeals to construe *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 108 S.Ct. 1684, 100 L.Ed.2d 127, 134 (1988), ruled that the "relitigation exception" authorized injunctions only against claims actually litigated and decided by a federal court judgment. *De Cosme v. Sea Containers, Ltd.*, 874 F.2d 66 (1st Cir. 1989); *In re G.S.F. Corp.*, 938 F.2d 1467 (1st Cir. 1991); *Staffer v. Bouchard Transp. Co.*, 878 F.2d 638 (2d Cir. 1989); *Kidder, Peabody & Co., Inc. v. Maxus Energy Corp.*, 925 F.2d 556 (2d Cir. 1991); *Nationwide Mut. Ins. Co. v. Burke*, 897 F.2d 734 (4th Cir. 1990); *LCS Serv. v. Hamrick*, 925 F.2d 745 (4th Cir. 1991); *Farias v. Bexar Cy. Bd. of Trustees*, 925 F.2d 866, *cert. denied*, 112 S. Ct. 193 (1991); *American Town Center v. Hall 83 Assocs.*, 912 F.2d 104 (6th Cir. 1990). These courts of appeals unanimously interpreted *Choo* as disallowing injunctions against claims which could have been but were not actually litigated in prior federal court proceedings. The Ninth Circuit rejected these decisions. The Ninth Circuit Court wrote:

> In the wake of *Choo*, five circuits have concluded that the relitigation exception is now limited to issues actually litigated by the federal court.
>
> * * *
>
> We disagree with those Circuits which have concluded that the relitigation exception is limited to issues "actually litigated" in a prior court proceeding.

958 F.2d at 870; Appendix, infra, at 9a - 10a.

In addition, the Ninth Circuit's opinion calls into question this Court's pronouncements in *Choo*. Quoting Wright, Miller and Cooper, 17 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4226, at 48 n.12.1 (1991 Supp.), the Ninth Circuit Court said:

> The Chick Kam Choo opinion is ambiguous and does not show that a distinction between claim preclusion and issue preclusion was really considered or intended.

958 F.2d at 870-71; Appendix, infra, at 10a.

The issue presented is an important one. It affects fundamental interests relating to comity, equity and federalism. The issue is of course important to the states, which are interested in protecting their courts and judicial proceedings from unwarranted and unnecessary interference from federal courts.

The Anti-Injunction Act's general prohibition against federal court injunctions of state court proceedings is rooted in a need to preserve and maintain our country's dual system of courts. As this Court noted in *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286 (1970):

> Obviously this dual system could not function if state and federal courts were free to fight each other for control of a particular case. Thus, in order to make the dual system work and to prevent "needless friction between state and federal courts," *Oklahoma Packing Co. v. Gas Co.*, 309 U.S. 4 (1940), it was necessary to work out lines of demarcation between the two systems.

The issue is a recurring one. Even following *Choo's* relatively clear pronouncement, the issue continued to beleaguer the federal courts. Since *Choo*, nine separate courts of appeals have reviewed this issue in reported opinions. With the Ninth Circuit's candid rejection of the other circuits' decisions, the rate of recurrence is likely to increase considerably.

The Ninth Circuit's ruling encourages state court litigants who

previously prevailed in federal court to run back to federal court. These litigants will hope to convince federal judges that their opponents could and should have raised their state court claims in the former federal court proceedings. Even if unsuccessful in federal court, these litigants could attempt yet another bite at the res judicata apple in state court.

The Ninth Circuit's ruling is likely to increase friction between state and federal courts. This is seen clearly by comparing the Ninth Circuit's ruling in this case with this Court's opinion in *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518 (1986). In *Parsons Steel*, the Court held that Full Faith and Credit barred a federal court from overruling a state court's res judicata determination, notwithstanding the relitigation exception. Under the Ninth Circuit's present decision, however, a litigant can foreclose a state court's res judicata determination if he can get to federal court before the state court rules on res judicata. Thus, the Ninth Circuit's decision encourages forum shopping. This forum shopping, in turn, will breed the very conflict between state and federal courts which the Anti-Injunction Act was enacted to prevent.

B. *Issue Two: Whether the "Equitable Restraint" Doctrine of Younger v. Harris, 401 U.S. 37, Applies to Purely "Civil" State Court Proceedings?*

In *Younger v. Harris*, 401 U.S. 37 (1971), this Court made it clear "that the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions." *Id.* at 45. The *Younger* Court's interdiction of federal interference in state judicial proceedings was based on federalism concepts of comity and respect for state functions. *Id.* at 44. This premise dates back to a 1793 Act, providing, "[N]or shall a writ of injunction be granted to stay proceedings in any court of a state...." 1 Stat. 335, c. 22, 5. "A comparison of the 1793 Act with 28 U.S.C. § 2283, its present-day successor, graphically illustrates how few and minor have been the exceptions granted from the flat, prohibitory language of the old Act." *Younger*, 401 U.S. at 43. In order to overcome the general prohibition against enjoining state proceedings, *Younger* required that two express pre-conditions be shown.

First, the moving party must demonstrate that it will suffer great, immediate and irreparable injury if the federal court stays its hand. *Id.* at 43, 46. Second, the moving party must demonstrate that it does not have an adequate remedy at law in the state courts. *Id.* at 43.

Admittedly, *Younger* dealt with federal intervention in state criminal proceedings. Whether *Younger* applied beyond criminal proceedings was left open by the Court. Subsequently, this Court decided *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), which found that "[t]he component of *Younger* which rests upon the threat to our federal system is...applicable to a civil proceeding such as this quite as much as it is to a criminal proceeding." *Id.* at 604. *Huffman*, however, was narrowly construed. This Court noted that the situation in *Huffman* was "more akin to a criminal prosecution than are most civil cases." *Id.* On this basis, *Huffman* was characterized as "quasi-criminal." *See, e.g., Louisville Area Inter-Faith Com. v. Nottingham Liq.*, 542 F.2d 655 (6th Cir.1976). Thus, *Huffman*, although shedding light on the issue, did not directly answer the question posed here, i.e., whether *Younger* applies to purely civil proceedings.

The Ninth Circuit's opinion below answered this question "No". In doing so, it created a split among the circuit courts of appeal. *See, e.g., Lamb Enterprises, Inc. v. Kiroff*, 549 F.2d 1052 (6th Cir. 1977), and cases cited therein at 1057. The need to resolve this split further justifies granting of this petition.

The Ninth Circuit refused outright to apply any equitable restraints to Respondents' request for injunction. Not only did the Ninth Circuit refuse to apply *Younger's* enhanced equitable restraint requirements of "great and immediate" irreparable injury, the Court also dispensed with any showing of irreparable injury whatsoever. The Court wrote:

> While the *Younger* doctrine has been applied to civil proceedings, such applications have been limited to quasi-criminal proceedings, *Juidice v. Vail*, 430 U.S. 327, 335-36 (1977), or to cases in which the state has a strong

> interest in enforcing its judgments, *Pennzoil Co. v Texaco Co.*, 481 U.S. 1, 12-14 (1987). Appellants have cited no case applying *Younger* absent any such state interest. Guam has no such interest here, since there is no significant territorial involvement and no territorial judgment to enforce.
>
> Finally, the Ulloas claim that the injunction was inappropriate because Western would suffer no "irreparable injury" by having to bring its res judicata defenses in Guam court. It is true that a showing of irreparable injury is required for a preliminary injunction to issue, and no such showing has been made here. However, "when actual success on the merits is shown, the inquiry is over and a party is entitled to relief as a matter of law irrespective of the amount of irreparable injury which may be shown." *Multnomah Legal Serv. Workers Union v Legal Serv. Corp.*, 936 F.2d 1547, 1553 (9th Cir. 1991) (quoting *Sierra Club v. Penfold*, 857 F.2d 1307, 1318 n.16 (9th Cir. 1988).

958 F.2d at 872; Appendix, infra, at 13a.

The Ninth Circuit's blanket refusal to apply to purely civil proceedings either *Younger's* equitable restraint doctrine or the general equity requirements of irreparable injury and inadequate remedy at law conflicts directly with decisions by other federal courts of appeals. For example, *Lamb Enterprises, Inc. v. Kiroff*, 549 F.2d 1052 (6th Cir. 1977) stated, "this court finds that *Younger-Huffman* adequately embodies the principle of equitable restraint in a test which is appropriately applied to assess the wisdom of federal court injunction of state civil, as well as state criminal proceedings." *Id.* at 1056-57.

Another Sixth Circuit case reached the same conclusion:

> [W]e view the policy factors underlying equitable restraint, *to wit*, federalism, comity, and the adequacy of plaintiffs' remedy at law in state court, as mandating

> equitable restraint here, (citations omitted), even though the state proceedings are neither criminal *(Younger, supra)* nor "in aid of and closely related to criminal statutes", such as the obscenity nuisance proceedings in *Huffman*....

Louisville Area Inter-Faith Com. v. Nottingham Liquors, Ltd., 542 F.2d 652, 654 (6th Cir. 1976).

In *Duke v. State of Texas*, 477 F.2d 244, 248 (5th Cir. 1973), the Fifth Circuit iterated "that the *Younger* principles of equity, comity and federalism apply to federal intervention in state 'civil' as well as 'criminal' proceedings...." In addition, several other courts sitting in different circuits have held *Younger* applicable to purely civil proceedings. *See Lamb*, 549 F.2d at 1057.

The Ninth Circuit's statement that Guam has no particularly significant territorial interest in this case is contradicted by statements of this Court and the decisions of other courts of appeals. This Court "repeatedly has recognized that the States have important interests in administering certain aspects of their judicial systems." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 12-13 (1986). Certainly Guam has no less an interest in proceeding with its pending Guam Superior Court action than did the State court in *Lamb, supra*, which, like this case, was a purely civil proceeding.

In fact, Guam's interest in this case is far superior to that of the federal court. The original 1972 lawsuits were brought in Guam federal court only because, at the time, Guam had no territorial court system of its own. The lawsuits, however, were purely territorial in nature, involving no federal question and no diverse citizenship. Under these circumstances, Guam, which now has its own court system, has all the interest in deciding this case. It is the federal court which has none.

II. *THIS CASE PRESENTS THE OPPORTUNITY TO ADDRESS IMPORTANT ISSUES CONCERNING THE APPLICATION OF THE RELITIGATION EXCEPTION*

A. *The Ninth Circuit's Decision Creates Uncertainty Regarding the Application of the "Actually Litigated" Test as Set Forth by This Court in Choo*

The Ninth Circuit, under the guise of the "actually litigated" test set forth by this Court in *Choo*, perfunctorily disposed of David Ulloa's rights under the contract. Although the court does not directly say, its opinion implies, that David Ulloa's contract rights were "actually litigated" by a post-judgment levy, execution and sale of those rights. The Ninth Circuit wrote:

> After the Ulloas failed to pay [the lower court judgment for watered stock], the district court issued a writ of execution on March 27, 1979. Pursuant to that writ, the federal marshal levied "any and all contract rights" David Ulloa had pursuant to the August 4 agreement. These rights were sold (to Holmes) at a judicial sale on April 12, 1979.

958 F.2d at 867; Appendix, infra, at 4a.

The Ninth Circuit implied that because "any and all contract rights" possessed by David Ulloa had been sold, his rights had been "actually litigated:"

> David Ulloa asked the Guam court to declare the federal order "null and void." State courts have no power to void federal court decrees. A federal court may enjoin such impermissible collateral attacks on federal judgments. (citation omitted). Whether the standard is res judicata or "issues actually litigated," therefore, the district court was correct to enjoin David Ulloa's claims. They have actually been litigated and decided in federal court.

Appendix, infra, at 7a.

The Ninth Circuit's only other justification for upholding the injunction barring David Ulloa's rights appears in a footnote:

> For similar reasons, we reject appellants' attempts to relitigate the levy and sale here by asserting that a court cannot levy contract rights under Guam law. Appellants had an opportunity to object to the levy in 1979, but failed to do so. They cannot raise the issue 12 years later, in federal or territorial court.

958 F.2d at 869 n.6; Appendix, infra, at 7a.

The Ninth Circuit's treatment of David Ulloa's contract rights is curious. The original opinion (Appendix, infra, at 17a - 31a) upheld the injunction barring David Ulloa from pursuing his contract claims, stating that the claims were "actually litigated" by the "order of sale" and the "order confirming sale." The court originally wrote:

> As to David Ulloa, resolution of this debate [i.e. whether the relitigation exception to the Anti-Injunction Act is limited to matters "actually litigated"] does not matter. All his rights under the August 4 Agreement were extinguished *by judicial sale* on April 12, 1979. *Both the order of sale and the order confirming sale are final orders* from which appeal may be taken under 28 U.S.C. § 1291. *See Citibank v. Data Lease Financial Corp.*, 645 F.2d 333, 337 (5th Cir. Unit B 1981). David Ulloa could have appealed the sale of his contract rights, but chose not to do so. His rights were "actually litigated" in 1979 for § 2283 purposes.

Appendix, infra, at 22a (emphasis added).

The Ulloas filed a Petition for Rehearing of the Ninth Circuit's original opinion. The Petition for Rehearing pointed out that the sale of David Ulloa's rights was pursuant to an execution sale, rather than a judicial sale as originally noted by the Ninth Circuit. The Petition for Rehearing also pointed out that as an execution sale, there was no "order of sale" or "order confirming sale" as originally relied on by the Ninth Circuit. The Petition for Rehearing

also pointed out that the *Citibank* case contradicted, rather than supported, the Ninth Circuit's original opinion, holding that an order directing judicial sale of property "may be attacked at any time, even years after confirmation and in a separate proceeding." 645 F.2d at 337.

The Ulloas' Petition for Rehearing was denied on June 18, 1992. Five days later, the Ninth Circuit issued its amended opinion, which, among other things, excised most of the references to the "order of sale," "order confirming sale," and the *Citibank* case.

The Ninth Circuit's opinion raises serious questions as to whether David Ulloa's rights were "actually litigated and decided" by a "judgment" as required under *Choo's* application of the relitigation exception. This Court should take this opportunity to resolve these questions and provide clarification as to what constitutes a "judgment" and what constitutes a matter "actually presented to and decided" by a prior federal court judgment under the relitigation exception.

B. *The Ninth Circuit's Opinion Conflicts With this Court's Prior Admonition Against Rendering Post Hoc Judgments of What the Earlier Federal Order was Intended to Say*

Referring to its earlier decision in *Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281 (1969), this Court in *Choo*, 486 U.S. 140, 147-48 (1988), wrote:

> Thus, as Atlantic Coast Line makes clear, an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court. Moreover, Atlantic Coast Line illustrates that this prerequisite is strict and narrow. The Court assessed the precise state of the record and what the earlier federal order actually said; *it did not permit the District Court to render a post hoc judgment as to what the order was intended to say.*

Emphasis added.

In spite of this Court's admonishment that a federal court is not to render a "post hoc" determination of matters not actually decided by the underlying judgment, the Ninth Circuit's opinion appears to have done just that. The Ninth Circuit upheld the injunction against the Ulloas' efforts to enforce their rights as shareholders. Here was the Ninth Circuit's justification:

> [T]he Ulloas failed to pay for their stock, and MCS canceled their subscription in 1972 pursuant to the terms of the Agreement.

958 F.2d at 867; Appendix, infra, at 4a.

Neither of the facts relied upon by the court -- (1) that the Ulloas failed to pay for their stock, nor (2) that MCS canceled their subscription -- was "actually litigated" in the 1972 lawsuits. These matters were testified to for the first time at the hearing on the petition for injunction in 1990 .

This Court should take this opportunity to reiterate and clarify the prohibition against "post hoc" factual determinations set forth in *Choo*, and thereby refine the parameters of this component of the relitigation exception.

C. *This Case Presents an Opportunity for Clarification of the "Same Transaction or Series of Transactions" Test Under Federal Res Judicata Law*

The resolution of the conflict among the Circuits regarding the scope of the "relitigation exception", if resolved in favor of the Ninth Circuit's interpretation in this case, will raise a related issue as to the correct application of res judicata law as set forth in earlier decisions of this Court. After ruling that the relitigation exception is governed under a res judicata, rather than the "actually litigated" standard, the Ninth Circuit in this case made the following application of federal res judicata law:

> The test for whether a subsequent action is barred is whether it arises from the same "transaction, or series of transactions" as the original action. Restatement

> (Second) Judgments § 24(1) (cited with approval in *Nevada*, 463 U.S. at 130-31 n.12). Whether two events are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could conveniently be tried together. Restatement § 24(2).
>
> The Ulloas' claim in case no. 24-72 was for the right to repurchase *all* shares of MCS (presumably pursuant to the May 24 agreement). Viewed in this light, Richard Ulloa's right to repurchase *some* shares of MCS asserted in case no. 1223-89 seems part of the same recovery sought in case no. 24-72. Different theories supporting the same claim for relief must be brought in the initial action. *See* Restatement § 25, comment d ("a plaintiff sometimes attempts another action seeking the same or approximately the same relief but adducing a different substantive law premise or ground. This does not constitute the presentation of a new claim...").

958 F.2d at 871; Appendix, infra, at 11a - 12a.

In reaching the above conclusion, the Ninth Circuit found that the Ulloas' 1989 lawsuits arose out of the same "transaction or series of transactions" as the 1972 lawsuits, rejecting Petitioner's arguments that: (1) the 1972 lawsuits were based on conduct which occurred before the events which are the subject of the 1989 Guam Superior Court actions; and (2) the claims asserted in the 1989 lawsuits were not in existence during the 1972 litigation.

This case therefore presents serious questions as to the Ninth Circuit's adherence to the res judicata principles set forth by this Court in *Nevada v. United States*, 463 U.S. 110, 130-31 n.12 (1983):

> In the Restatement (Second) of Judgments (1982), a more pragmatic approach, one "not capable of a mathematically precise definition," was adopted. *Id.*, § 24, Comment *b*. Under this approach causes of actions are the same if they arise from the same "transaction";

whether they are products of the same "transaction" is to be determined by "giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Id.*, § 24.

III. *THE CONFLICTS CREATED BY THE NINTH CIRCUIT'S OPINION WILL LIKELY CAUSE THESE ISSUES TO RECUR IN THE LOWER COURTS*

As discussed above, the Ninth Circuit's opinion has created conflict and uncertainty as to several important issues directly relating to federalism, comity, and the propriety of federal court interference with state court proceedings. The conflicts created are significant because they will undoubtedly resurface in the lower courts. This petition presents this Court with the opportunity to resolve these important conflicts, provide guidance to the circuit and district courts, and prevent further confusion, uncertainty, and unnecessary appeals.

Even with guidance, these issues have shown themselves to be persistent and recurring ones. For example, in the relatively brief four-year period since this Court's 1988 decision in *Choo*, six of the twelve Circuits have published decisions on the very issue thought by many to have been settled by *Choo*. *De Cosme v. Sea Containers, Ltd.*, 874 F.2d 66 (1st Cir. 1989); *In re G.S.F. Corp.*, 938 F.2d 1467 (1st Cir. 1991); *Staffer v. Bouchard Transp. Co.*, 878 F.2d 638 (2d Cir. 1989); *Kidder, Peabody & Co., Inc. v. Maxus Energy Corp.*, 925 F.2d 556 (2d Cir. 1991); *Nationwide Mut. Ins. Co. v. Burke*, 897 F.2d 734 (4th Cir. 1990); *LCS Serv. v. Hamrick*, 925 F.2d 745 (4th Cir. 1991); *Farias v. Bexar Cy. Bd. of Trustees*, 925 F.2d 866, *cert. denied*, 112 S. Ct. 193 (1991); *American Town Center v. Hall 83 Assocs.*, 912 F.2d 104 (6th Cir. 1990). With the Ninth Circuit's outright rejection of the heretofore unanimous reading of *Choo*, the likelihood of recurrence and conflicting results has increased substantially.

In fact, just during the very brief period since the Ninth Circuit's opinion was rendered in the instant case, Petitioners are aware of at least two more cases in the Ninth Circuit raising these issues. *Western Systems, Inc. v. Cassidy*, No. 90-16524 (9th Cir.); *Blalock-Eddy Ranch v. MCI Telecommunications Corp.*, No. 91-56542 (9th Cir.). This Court now has the opportunity to settle these issues, and preempt further uncertainty below. Without proper guidance from this Court, these issues are likely to recur with ever-increasing frequency and inconsistency in disposition.

The *Younger-Huffman* issue is a persistent and recurring one as well. Numerous lower court cases have wrestled with the question left open by *Younger-Huffman* whether "equitable restraint" applies to purely civil state court proceedings. *See, e.g.*, the other Circuit Court decisions confronted with this issue listed in *Lamb Enterprises v. Kiroff*, 549 F.2d 1052, at 1056-57 (6th Cir. 1977). These decisions, unanimously in favor of extending *Younger* to state civil proceedings, were all rendered within a fairly short four-year period from 1972-1976: *Louisville Area Inter-Faith Com. v. Nottingham Liq.*, 542 F.2d 652 (6th Cir. 1976); *Ahrensfeld v. Stephens*, 528 F.2d 193 (7th Cir. 1975); *Anonymous v. Association of the Bar of the City of New York*, 515 F.2d 427 (2d Cir.), *cert. denied*, 423 U.S. 863 (1975); *Goodrich v. Supreme Court of the State of South Dakota*, 511 F.2d 316 (8th Cir. 1975); *Cleaver v. Wilcox*, 499 F.2d 940 (9th Cir. 1974); *Douglas-Guardian Warehouse Corp. v. Posey*, 486 F.2d 739 (10th Cir. 1973); *Roy v. Jones, Chief Justice*, 484 F.2d 96 (3rd Cir. 1973); *American Radio Association v. Mobile Steamship Association*, 463 F.2d 1 (5th Cir. 1973); *Duke v. State of Texas*, 477 F.2d 244 (5th Cir. 1973), *cert. denied*, 415 U.S. 978 (1974); *Lynch v. Snepp*, 472 F.2d 769 (4th Cir. 1973), *cert. denied*, 415 U.S. 978 (1974); *Cousins v. Wigoda*, 463 F.2d 603 (7th Cir. 1972), *stay denied*, 409 U.S. 1201 (1972). Now, with the Ninth Circuit departure from the majority rule established by these decisions, the specter arises of increased federal litigation over this important and now unsettled issue.

CONCLUSION

This case affords the Court an opportunity to visit and decide several important and unsettled questions in a case bearing a high probability of having been wrongly decided below. The Ninth Circuit Court of Appeals virtually admits that had this case been decided in any of the five other circuits to have passed on these issues, the result would have been the opposite of that reached below. Therefore, the Court is respectfully asked to grant this Petition.

Respectfully submitted,

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APPENDIX

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Western Systems, Inc.; Lee M. Holmes, *Plaintiffs-Appellees,* *v.* Richard F. Ulloa; David J. Ulloa, *Defendants-Appellants.*	Nos. 90-15732; 91-15110 D.C. No. CV 197-75-ARM ORDER AND AMENDED OPINION

Appeal from the United States District Court
for the District of Guam
Alex R. Munson, District Judge, Presiding

Argued and Submitted
November 8, 1991—Honolulu, Hawaii

Filed March 4, 1992
Amended June 23, 1992

Before: Arthur L. Alarcon, Dorothy W. Nelson and William C. Canby, Jr., Circuit Judges.

Opinion by Judge D.W. Nelson

ORDER

The opinion in this matter filed March 4, 1992, is hereby amended as follows:

1) Pages 2144-45: delete the paragraph beginning "as to David Ulloa..."

2) Page 2145, first full paragraph: delete the word "Further,"

3) Page 2145, first full paragraph, line 9: substitute "issues actually litigated" for "'actually litigated' claims"

4) Page 2145, second full paragraph, line 6: substitute " 'issues...actually litigated' " for " 'actually litigated' "

5) Page 2146, line 2: substitute " 'issues...actually litigated' " for " 'actually litigated' "

6) Page 2147, line 7: delete footnote 10.

7) Page 2148, second full paragraph, line 2: substitute "issues" for "claims"

8) Page 2148, second full paragraph, line 8: substitute "issue" for "claim"

9) Page 2149, line 4: add the following at the end of the paragraph: "It is also contrary to the language of *Choo*, which would bar relitigation of '*claims or* issues [that] actually have been decided.' 486 U.S. at 148."

10) Page 2149, second full paragraph, lines 1-2: delete the first sentence, and replace it with the following: "The problems with limiting the relitigation exception to collateral estoppel are particularly evident in this case."

11) Page 2150, first full paragraph, lines 1-3: delete the first sentence. Begin the second sentence as follows: "Under res judicata, the prior judgement is conclusive..."

OPINION

D.W. NELSON, Circuit Judge:

Western Systems and the Ulloas (David and Richard) filed suits against each other in the United States District Court in Guam in 1972. The suits concerned in part the validity of an agreement giving the Ulloas some rights to ownership of stock in Western Systems. Western Systems prevailed in both suits. Western's efforts to collect its judgment from the Ulloas continued until 1989, when the federal court litigation was finally concluded by settlement. These cases were the subject of no less than four appeals to the Ninth Circuit. The same day the federal cases settled, the Ulloas filed two suits in Guam Superior Court, alleging claims closely related to those litigated in the 1972 federal suit. Western sought and obtained a federal court injunction prohibiting the Ulloas from proceeding with the territorial court action. Western was also awarded sanctions by the district court. The Ulloas appealed both rulings. We affirm both the injunction and the award of sanctions, but remand the amount of the sanction to the district court for reconsideration.

FACTUAL AND PROCEDURAL BACKGROUND

This appeal is the latest sortie in nineteen years of shareholder litigation over the Guam cable television corporation, now called Western Systems, Inc. The facts are long, involved, and only somewhat relevant to the current appeal. The Ulloas founded Westerns predecessor company (MCS), which soon ran into financial trouble. The Ulloas sold their interests to the Guam Economic Development Authority (GEDA) for $1 each on May 21, 1971. Under this agreement, GEDA assumed MCS's debts, agreed not to sell the company for 180 days, and gave the Ulloas a right of first refusal of stock GEDA wished to sell.

GEDA found a buyer for MCS within the 180 day period. Because the May 21 Agreement prevented it from selling the company during this period, GEDA entered into two Agreements

with the Ulloas, on July 20, 1971 and August 4, 1971, which superseded the May 21 Agreement. Under these Agreements, appellee Holmes bought 70% of the MCS stock. Holmes remains the majority shareholder of Western today. The Agreements also gave the Ulloas and other original shareholders two rights. First, they could buy their pro rata share of 15% of the stock for $1 per share (the "¶ 2 Option"). Second, five individuals (including David Ulloa) could buy another 3% of the stock each, at $4 per share, once MCS had paid its debts to GEDA (the "¶ 3 Option"). All parties to this appeal were parties to these agreements.

In 1971, David Ulloa exercised both his and Richard Ulloa's rights under ¶ 2. However, the Ulloas failed to pay for their stock, and MCS canceled their subscription in 1972 pursuant to the terms of the Agreement.

On February 28, 1972, the Ulloas filed suit against GEDA and Holmes, seeking to cancel the August 4 Agreement and to have all MCS stock returned to them. This was case number 24-72. On November 28, 1972, GEDA, Holmes, and MCS sued the Ulloas, claiming that they had issued watered stock to themselves during the time they controlled MCS. This was case number 197-72. The District Court decided against the Ulloas in both cases in 1977. We affirmed both decisions. See Guam *Economic Development Authority v. Ulloa*, 628 F.2d 1356 (9th Cir. 1980) (197-72); Ulloa v. *Guam Economic Development Authority*, 580 F.2d 952 (9th Cir. 1978) (24-72).

As a result of these decisions, Holmes, GEDA and MCS were awarded a $189,000 judgment against the Ulloas for watered stock.[1] After the Ulloas failed to pay, the district court issued a writ of execution on March 27, 1979. Pursuant to that writ, the federal marshal levied "any and all contract rights" David Ulloa had pursuant to the August 4 agreement. These rights were sold (to Holmes) at a judicial sale on April 12, 1979. David Ulloa did not appeal the execution, levy, or sale. Further efforts to enforce the

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[1]Postjudgment interest had increased that figure to over $300,000 by 1989.

judgment continued until 1989.[2]

On December 5, 1989, the parties settled the claim against the Ulloas for $238,000. That same day, the Ulloas filed two suits in Guam Superior Court against Western Systems. The first, CV 1223-89, seeks rights to 30% of MCS (now Western) stock pursuant to the August 4, 1971 agreement. The second, CV 1224-89, asks the Guam Superior Court to declare null and void the March 27, 1979 federal court order of execution, levy and sale of David Ulloa's contract rights.

Western and Holmes promptly filed a petition in the United States District Court seeking to enjoin the Guam court suits. The district court granted the injunction, and in addition awarded $28,117.06 in fees and costs to Western as sanctions for the Ulloas' bad faith in filing the lawsuits. The Ulloas appealed the injunction (90-15732) and the sanctions (91-15110). These appeals are consolidated before this Court.

STANDARD OF REVIEW

District court injunctions are normally reviewed only for an abuse of discretion. *Multnomah Legal Serv. Workers Union v. Legal Services Corp.*, 936 F.2d 1547, 1552 (9th Cir. 1991). However, applying an erroneous legal standard is an abuse of discretion. *Golden v. Pacific Maritime Ass'n*, 786 F.2d 1425, 1426-27 (9th Cir. 1986), *as amended* 40 Fair Emp. Prac. Cases (BNA) 1500, 1501 (9th Cir. 1986). The question whether the district court had the power to issue the injunction is therefore reviewed de novo, while its decision to exercise that power is reviewed for an abuse of discretion. *See Lou v. Belzberg*, 834 F.2d 730, 733-34 (9th Cir. 1987), *cert. denied* 485 U.S. 993 (1988).

Similarly, "an appellate court should apply an abuse-of-discretion standard in reviewing all aspects of a district court's Rule 11 determination. "*Cooter & Gell Co. v. Hartmarx Corp.*, 110 S. Ct. 2447, 2461 (1990). Failure to apply a correct legal standard constitutes an abuse of discretion. *Id.*

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[2]We held that Western Systems could continue to enforce the judgment in *Guam Economic Development Authority v. Ulloa*, 841 F.2d 990 (9th Cir. 1988).

DISCUSSION

1. The Relitigation Exception to the Anti-Injunction Act

The two suits filed in Guam territorial court sought three basic kinds of relief. First, both David and Richard Ulloa claimed that they should have been offered the stock of other MCS shareholders who did not exercise their rights under ¶ 2 of the August 4, 1971 Agreement.[4] Second, David Ulloa claims that he should have been offered 3 % of MCS stock pursuant to ¶ 3 when MCS repaid its debt to GEDA in full.[4] Finally, David Ulloa seeks to have the Guam Superior Court declare null and void the federal court execution, levy and sale of any and all contract rights he possessed by virtue of the August 4 Agreement.

The Anti-Injunction Act, 28 U.S.C. § 2283, provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

The Act reflects fundamental principles of equity, comity, and federalism which normally counsel against federal interference with state judicial proceedings.[5] Exceptions to the Act are to be strictly construed. *Choo v. Exxon Corp.*, 486 U.S. 146 (1988).

[1] The key exception in this case is the final one, authorizing a

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[4]Paragraph 2 provides: "In the event that any of the shareholders indicates that he does not desire to purchase the shares or should default in payment, then such shares will be offered to the remaining former stockholders on the above pro rata basis."

[4]Paragraph 3 provides: "The remaining 15% of the stock of MCS held by GEDA shall be made available for sale to [David Ulloa, Holmes, and 3 others], in equal proportions....provided however, that the said shares shall not be so made available until the MCS debt to GEDA...is repaid in full."

[5]Guam is not a state. However, the principles of federalism which underlie federal-state judicial relations apply equally to federal-Guamanian relations. 48 U.S.C. § 1424-2; *Guam v. Yang*, 850 F.2d 507, 510 (9th Cir. 1988 (en banc).

federal court to issue injunctions to "protect or effectuate its judgments" (the "relitigation exception"). The parties do vigorous battle over the scope of this exception. Western contends that the exception applies whenever res judicata would bar relitigation of a claim. Res judicata bars both claims actually litigated and those that arise from the same transaction and *could have been* litigated in a prior proceeding. **Restatement (Second) Judgments** §24(1). The Ulloas, on the other hand, argue that section 2283 allows federal courts to enjoin relitigation only of issues *actually litigated* in the federal proceeding. The Supreme Court has in the past expressly refused to decide this question. *See Parsons Steel v. First Alabama Bank*, 474 U.S. 518, 526 n.4 (1986).

David Ulloa asked the Guam court to declare the federal order "null and void." State courts have no power to void federal court decrees. A federal court may enjoin such impermissible collateral attacks on federal judgments. *See Williams Natural Gas Co. v. Oklahoma City*, 809 F.2d 255, 264 (10th Cir. 1989) (error *not* to enjoin collateral attack by state court on the validity of federal judgment), *cert. denied*, 110 S. Ct 3234 (1990). Whether the standard is res judicata or "issues actually litigated", therefore, the district court was correct to enjoin David Ulloa's claims. They have actually been litigated and decided in federal court.[6]

The same cannot be said, though, of Richard Ulloa's claim to refusal rights (and for fraud) under ¶ 2. While Western notes that the Ulloas obtained the stock ledger and other corporate records during discovery in case no. 197-72, and thus knew of their refusal rights and *could* have raised them, Richard Ulloa's refusal rights were not "actually litigated" in either case no. 24-72 or 197-72.[7]

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[6]For similar reasons, we reject appellants' attempts to relitigate the levy and sale here by asserting that a court cannot levy contract rights under Guam law. Appellants had an opportunity to object to the levy in 1979, but failed to do so. They cannot raise the issue 12 years later, in federal or territorial court. *See Sidney v. Zah*, 718 F.2d 1453, 1457 (9th Cir. 1983) ("The Tribe did not appeal the1980 ruling. Thus, the merits of the 1980 injunction cannot be challenged in this appeal....")

[7]The district court in case no. 24-72 also held that the Ulloas would be barred by unclean hands and estoppel from seeking to have a constructive trust imposed on MCS for entire value of the corporation. These equitable doctrines were not and could not be used to bar a suit for damages for breach of contract.

The validity of the injunction against his claims therefore depends on whether res judicata or "actually litigated" is the proper standard for applying the relitigation exception to § 2283.

For years the prevailing rule in the Ninth Circuit and elsewhere has been that section 2283 does not prohibit injunctions against any claim that would be barred by res judicata in federal court. *See DeNardo v. Murphy*, 781 F.2d 1345, 1348 (9th Cir.), *cert. denied* 476 U.S. 1111 (1986); *Midkiff v. Tom*, 725 F.2d 502, 504 (9th Cir. 1984) ("Federal courts may enjoin state court proceedings in order to protect the res judicata effect of their own judgments."), *rev'd on other grounds sub nom. Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229 (1984).[8] While this court has sometimes required a "strong and unequivocal showing of relitigation" before applying section 2283, *see Bechtel Petroleum v. Webster*, 796 F.2d 252, 253-54 (9th Cir. 1986), *cert. dismissed*, 481 U.S. 1065 (1987), as a rule we have applied the exception as long as defendants had a full and fair *opportunity* to litigate the issue in the prior proceeding. *Golden v. Pacific Maritime Assn.*, 786 F.2d at 1427-28.

The continuing vitality of this rule was thrown into doubt by the Supreme Court's 1988 decision in *Choo v. Exxon Corp.*, 486 U.S. 140 (1988). In *Choo*, a federal court in Texas had dismissed an admiralty claim on forum non conveniens grounds, concluding that Singapore was the appropriate place to file suit. When the plaintiffs refiled in Texas state court, the federal court enjoined the action. The Supreme Court reversed, reasoning that Texas state courts might apply different forum non conveniens rules than do the federal courts. *Id.* at 148-49. In dictum,[9] the Court said that "an

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[8]*Accord Silcox v. United Trucking Serv.*, 687 F. 2d 848, 851-52 (6th Cir. 1982); *CCMS Pub Co. v. Dooley-Maloof, Inc.*, 645 F.2d 33, 38 (10th Cir. 1981); *Browning Debenture Holders Comm. v. DASA Corp.*, 605 F.2d 35, 38-39 (2nd Cir. 1978); *Samuel C. Ennis & Co. v. Woodmar Realty Co.*, 542 F.2d 45, 49 (7th Cir. 1976) *cert. denied* 429 U.S. 1096 (1977) *BGW Assoc. v. Valley Broadcasting Co.*, 532 F. Supp. 1115, 1117 (S.D.N.Y. 1982) *Contra Delta Air Lines; v. McCoy Restaurants*, 7098 F.2d 582, 586 (11th Cir. 1983).

[9]In the case before the Supreme Court, the parties *could not have* litigated the Texas state rules of forum non conveniens in federal court. The question this court faces was therefore not before the Supreme Court.

essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court. Moreover,...this prerequisite is strict and narrow." *Id.* at 148.

In the wake of *Choo*, five circuits have concluded that the relitigation exception is now limited to issues actually litigated by the federal court. *See In re G.S.F. Corp.*, 938 F.2d 1467, 1478 (1st Cir. 1991) (applying section 2283 principles by analogy to bankruptcy case); *Farias v. Bexar County Board of Trustees*, 925 F.2d 866, 879-80 (5th Cir.) ("under *Chick Kam Choo*, what looks like the same rodeo in a different arena is really a different rodeo for relitigation exception purposes"), *cert. denied*, 112 S. Ct. 193 (1991); *LCS Serv. v. Hamrick*, 925 F.2d 745, 749-50 (4th Cir. 1991) (scope of section 2283 is less than res judicata; court does not mention "actually litigated" test); *American Town Center v. Hall 83 Associates*, 912 F.2d 104, 112 n.2 (6th Cir. 1990); *Nationwide Mut. Ins. Co. v. Burke*, 897 F.2d 734, 737-38 (4th Cir. 1990); *Staffer v. Bouchard Transp. Co.*, 878 F.2d 638, 642-44 (2nd Cir. 1989); *De Cosme v. Sea Containers, Ltd.*, 874 F.2d 66, 68 (1st Cir. 1989); *Murray v. Nat'l Broadcasting Co.*, 718 F. Supp. 249, 251 (S.D.N.Y. 1989) (enjoining only those claims that were actually litigated).

This court has considered the impact of *Choo* only once, in *Zipfel v. Halliburton Co.*, 861 F.2d 565, 568-70 (9th Cir. 1988) *(Zipfel II)*. *Zipfel* was a close factual analogue to *Choo*. We had decided before *Choo* that a federal court could not enjoin state proceedings on forum non conveniens grounds, since the state might apply a different law of forum non conveniens and defendants would have no opportunity to argue it. *See Zipfel v. Halliburton Co.*, 832 F.2d 1477, 1488 (9th Cir. 1988), *cert. denied* 486 U.S. 1054 (1988) *(Zipfel I)*. *Choo* reached the same conclusion.

[2] After *Choo* was decided, this court recalled the mandate in *Zipfel I*. We issued a revised opinion in which we *broadened* the scope of the injunction permissible under section 2283. We read *Choo* as holding an injunction permissible where a prior federal decision necessarily precludes a certain result, even if that result

was not itself actually litigated. *Zipfel II*, 861 F.2d at 570. *Zipfel II* did not directly decide, however, whether *Choo* limited the scope of the relitigation exception to claims actually litigated in federal court. We face that question here for the first time.[10]

[3] We disagree with those Circuits which have concluded that the relitigation exception is limited to claims actually litigated in a prior court proceeding. As the Supreme Court noted in *Choo*, the relitigation exception is founded in the well-recognized concepts of res judicata and collateral estoppel. 486 U.S. at 147. To read *Choo* as the other Circuits have, however, would in essence be to read res judicata entirely out of section 2283. Any claim which was actually litigated by the parties in a prior proceeding will be barred by collateral estoppel ("issue preclusion"), without any need to rely on res judicata ("claim preclusion"). This result seems to us to be contrary to the purposes of section 2283, as stated by the Supreme Court in *Choo*.

We are therefore in agreement with Wright, Miller and Cooper. Criticizing the Second Circuit's reading of *Choo* in *Staffer*, they said:

> This decision seems unduly restrictive. The Chick Kam Choo opinion is ambiguous and does not show that a distinction between claim preclusion and issue preclusion was really considered or intended. If the effects of a judgment are to be enforced by injunction, claim preclusion is often as good a candidate as is issue preclusion. Indeed the Staffer case involves nonmutual issue preclusion and seems a weaker candidate for an injunction than many claim preclusion cases would be.

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[10]Two other cases have touched on this issue, but neither case resolved it. In *Merle Norman Cosmetics, Inc. v. Victa*, 936 F.2d 466, 468 (9th Cir. 1991), we found it unnecessary to decide whether *Choo* limited the scope of the litigation exception because we found that the district court was within its discretion in refusing to grant an injunction, regardless of the appropriate legal standard. And in *Amwest Mortgage Corp. v. Grady*, 925 F.2d 1162, 1164-65 (9th Cir. 1991), we relied on pre-*Choo* cases in concluding that the relitigation exception extended to all claims which the defendant had a "full and fair opportunity" to litigate. However, *Amwest* did not cite or discuss *Choo*.

17 **C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure** § 4226, at 48 n.121 (1991 Supp). See also *Royal Ins. Co. of America v. Quinn-L Capital Corp.*, 759 F. Supp. 1216, 1233 n.19 (N.D. Tex. 1990) (*Choo* was "ambiguous"; majority interpretation "seems unduly restrictive").

The problems with limiting the relitigation exception to collateral estoppel are particularly evident in this case. This case began twenty years ago. It was litigated for seventeen years in the United States District Court for the District of Guam, and was appealed to this Circuit no less than four times. One hour after the federal case was settled, the Ulloas filed suit in Guam territorial court. The issues raised in that suit arose from the same contracts and factual circumstances which had been litigated in federal court for the past seventeen years. The federal court was far more familiar with the issues presented than the Guam court could have been. Furthermore, the preclusion issues facing the Guam court were issues of federal law.[11] Under the compelling circumstances of this case, we conclude that the principles announced in *Choo* are not disserved by the district court's injunction. We therefore conclude that the relitigation exception to section 2283 allows the district court to enjoin the Guam litigation on the ground that it is barred by res judicata.

[4] Under res judicata, the prior judgment is conclusive "not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." *Nevada v. United States*, 463 U.S. 110, 130 (1983); *accord Sidney v. Zah*, 718 F.2d 1453, 1458 (9th Cir. 1983). David Ulloa's claims, which were actually litigated in federal court, are clearly barred under the principle of res judicata. The only question is whether Richard Ulloa's claim for first refusal rights is also barred.

[5] The test for whether a subsequent action is barred is whether it arises from the same "transaction, or series of transactions" as the

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[11]The res judicata effect of federal court judgments is a matter of federal law. *Robi v. Five Platters*, 838 F.2d 318, 322 (9th Cir. 1988).

original action. **Restatement (Second) Judgments** § 24(1) (cited with approval in *Nevada*, 463 U.S. at 130-31 n.12). Whether two events are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could conveniently be tried together. **Restatement** § 24(2).

The Ulloas' claim in case no. 24-72 was for the right to repurchase *all* shares of MCS (presumably pursuant to the May 24 agreement). Viewed in this light, Richard Ulloa's right to repurchase some shares of MCS asserted in case no. 1223-89 seems part of the same recovery sought in case no. 24-72. Different theories supporting the same claim for relief must be brought in the initial action. *See* **Restatement** § 25, comment d ("a plaintiff sometimes attempts another action seeking the same or approximately the same relief but adducing a different substantive law premise or ground. This does not constitute the presentation of a new claim...")

[6] Richard Ulloa contends that he did not know until recently that the rights of first refusal had not been exercised by the other shareholders, and that he therefore could not have asserted those rights in the 1972 proceeding. Ignorance of a party does not, however, avoid the bar of res judicata unless the ignorance was caused by the misrepresentation or concealment of the opposing party. **Restatement (Second) Judgments** § 26 *comment j.*

[7] Even if ignorance were sufficient to avoid the bar, that fact would not aid the Ulloas. Evidence was presented during the federal litigation concerning which stockholders had exercised their rights to purchase MCS stock under ¶ 2. It therefore appears that the Ulloas were on notice of their potential claim for rights of first refusal. Moreover, claims arising from those rights are part of the same "transaction" that was litigated in federal court, and are consequently within the bar of res judicata. Thus, the injunction properly included those claims.

2. Equitable Requirements

[8] The Ulloas raise three additional objections to the injunction

based on traditional principles of equity. First, they contend that the injunction is overbroad because it includes claims assigned to the Ulloas by other shareholders. Both Western's counsel and the district court expressly noted that those claims were not before the court, and were not encompassed within its order. The Ulloas' objection is based solely on what they argue is a possible reading of the district court's order. The district court enjoined the Ulloas from "pursuing the claims asserted by them, *individually*, in the two cases filed in Guam Superior Court." (emphasis added). Reading the order together with the opinion, which states that the assigned claims "were not addressed in the Petition for Injunction, and are not addressed in this opinion," we conclude that the injunction does not apply to the claims of other shareholders and is not overbroad.

[9] Second, the Ulloas contend that the principles of *Younger v. Harris*, 401 U.S. 37 (1971), should preclude injunctive relief here. *Younger*'s "equitable restraint" doctrine, like section 2283, is based in principles of equity, comity, and federalism. While the *Younger* doctrine has been applied to civil proceedings, such applications have been limited to quasi-criminal proceedings, *Juidice v. Vail*, 430 U.S. 327, 335-36 (1977), or to cases in which the state has a strong interest in enforcing its judgments, *Pennzoil Co. v. Texaco Co.*, 481 U.S. 1, 12-14 (1987). Appellants have cited no case applying *Younger* absent any such state interest. Guam has no such interest here, since there is no significant territorial involvement and no territorial judgment to enforce.

[10] Finally, the Ulloas claim that the injunction was inappropriate because Western would suffer no "irreparable injury" by having to bring its res judicata defenses in Guam court. It is true that a showing of irreparable injury is required for a *preliminary* injunction to issue, and no such showing has been made here. However, "when actual success on the merits is shown, the inquiry is over and a party is entitled to relief as a matter of law irrespective of the amount of irreparable injury which may be shown." *Multnomah Legal Serv. Workers Union v. Legal Serv. Corp.*, 936 F.2d 1547, 1553 (9th Cir. 1991) (quoting *Sierra Club v. Penfold*, 857 F.2d 1307, 1318 n.16 (9th Cir. 1988)). In this case, the district court issued a permanent injunction after a trial on the merits. The cases

appellants cite are inapposite, as they involve either preliminary relief or the separate "irreparable injury" requirement of *Younger v. Harris*, 401 U.S. 37 (1971). Injunctive relief was therefore appropriate under traditional principles of equity.

3. Sanctions

The district court awarded sanctions to Western in the form of attorneys' fees and costs. The court indicated that sanctions were appropriate because the Guam suits were vexatious, harassing, and filed in bad faith. The court did not explicitly set forth the basis for its fee award. The Ulloas challenge the award of sanctions on multiple grounds.

First, the Ulloas claim that the district court's failure to set forth the underlying basis of the award denied them fair notice and opportunity for a hearing, and therefore mandates reversal of the award. The Ulloas rely on *Insurance Benefit Admins. v. Martin*, 871 F.2d 1354, 1363 (7th Cir. 1989) to support this proposition. *Martin* involved several conflicting claims of statutory authority for sanctions, some of which could support sanctions and others of which could not. The court concluded that the district court's failure to specify the basis for its award made appellate review impossible, and it remanded the claim.

[11] No such problem appears here. Appellees urge this Court to uphold the sanctions as an exercise of the district court's traditional equitable powers. Appellants were clearly on notice of this basis for sanctions, as they briefed it extensively before this court. They also submitted a written brief on the issue to the district court. In addition, the district court judge clearly set forth the reasons he believed sanctions to be appropriate.

[12] The Ulloas contend that sanctions are not available under the "inherent powers" of the district court, because those powers were preempted or at least subsumed by Fed. R. Civ. P. 11. The Supreme Court explicitly rejected this theory last year in *Chambers v. Nasco, Inc.*, 111 S. Ct. 2123, 2134 (1991). The Court held that courts retain the inherent power to sanction bad faith conduct

during litigation, and that this power exists independent of Rule 11.

The Ulloas next argue that the district court impermissibly sanctioned them for conduct — the filing of the Guam Superior Court cases — which occurred not in federal court, but in Guam court. Here, again, *Chambers v. Nasco, Inc.* is fatal to their contention. There the Supreme Court rejected a challenge to the imposition of sanctions "for conduct before other tribunals". *Id.* at 2139. The Court held that "[a]s long as a party receives an appropriate hearing,...the party may be sanctioned for abuses of process occurring beyond the courtroom...." *Id.*

The next point raised by the Ulloas has merit, however. It is that they never received an appropriate hearing, *id.*, and had no proper opportunity in the district court to contest the questions of bad faith and the amount of the sanctions. Our review of the record leads us to agree.

The posture of this case is unusual. The district court granted attorneys' fees at the same time that it granted the injunction. It ordered appellees to file an accounting of their costs and expenses. They did so. On August 16, 1990, the court asked counsel for the Ulloas to discuss the matter while counsel was in court on another matter. On the basis of this "hearing", which fills less than two pages in the record, the court awarded sanctions on September 13, 1990. The next day, the court accepted the Ulloas' brief on attorneys' fees, but treated it as a motion for reconsideration and refused to allow the Ulloas to raise many of the objections that they present to this court.

[13] On this record, we conclude that the Ulloas were not afforded sufficient notice nor given an adequate hearing at which to contest the proposed sanctions. *Cf. Roadway Express, Inc. v. Piper,* 447 U.S. 752, 767 (1980)("sanctions...should not be assessed lightly or without fair notice and an opportunity for a hearing on the record.") We therefore vacate the award of sanctions and remand to the district court for a hearing on the appropriateness and the amount of the sanctions. In light of our remand, we do not reach the other challenges to the sanctions presented by the Ulloas.

Finally, appellees seek further sanctions on appeal, pursuant to Fed. R. App. P. 38. Rule 38 provides that "[i]f a court of appeals shall determine that an appeal is frivolous, it may award just damages." An appeal is frivolous if the result is obvious and [appellant's] arguments are wholly without merit. *Scott v. Younger*, 739 F.2d 1464, 1467 (9th Cir. 1984). The Ulloas presented this court with an unsettled issue of law with regard to the Anti-Injunction Act, and the result we reach today is contrary to that reached by other circuits that have considered the issue. The challenge to the imposition of sanctions for lack of a proper hearing was meritorious. The results in this case were therefore far from obvious. We accordingly deny the request for sanctions on appeal.

CONCLUSION

The injunction against further proceedings in the courts of Guam is affirmed. The award of sanctions against the Ulloas is vacated, and the case is remanded to the district court for a hearing to determine the propriety and amount of sanctions. Appellees shall recover their costs on this appeal. AFFIRMED IN PART; VACATED IN PART, and REMANDED.

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Western Systems, Inc.; Lee M. Holmes,

Plaintiffs-Appellees,

v.

Richard F. Ulloa; David J. Ulloa,

Defendants-Appellants.

Nos. 90-15732; 91-15110

D.C. No. CV 197-75-ARM

OPINION

Appeal from the United States District Court
for the District of Guam
Alex R. Munson, District Judge, Presiding

Argued and Submitted
November 8, 1991 Honolulu, Hawaii

Filed March 4, 1992

Before: Arthur L. Alarcon, Dorothy W. Nelson and William C. Canby, Jr., Circuit Judges.

Opinion by Judge D.W. Nelson

OPINION

D.W. NELSON, Circuit Judge:

Western Systems and the Ulloas (David and Richard) filed suits against each other in the United States District Court in Guam in 1972. The suits concerned in part the validity of an agreement giving the Ulloas some rights to ownership of stock in Western Systems. Western Systems prevailed in both suits. Western's efforts to collect its judgment from the Ulloas continued until 1989, when the federal court litigation was finally concluded by settlement. These cases were the subject of no less than four appeals to the Ninth Circuit. The same day the federal cases settled, the Ulloas filed two suits in Guam Superior Court, alleging claims closely related to those litigated in the 1972 federal suit. Western sought and obtained a federal court injunction prohibiting the Ulloas from proceeding with the territorial court actions. Western was also awarded sanctions by the district court. The Ulloas appealed both rulings. We affirm both the injunction and the award of sanctions, but remand the amount of the sanction to the district court for reconsideration.

FACTUAL AND PROCEDURAL BACKGROUND

This appeal is the latest sortie in nineteen years of shareholder litigation over the Guam cable television corporation, now called Western Systems, Inc. The facts are long, involved, and only somewhat relevant to the current appeal. The Ulloas founded Westerns predecessor company (MCS), which soon ran into financial trouble. The Ulloas sold their interests to the Guam Economic Development Authority (GEDA) for $1 each on May 21, 1971. Under this agreement, GEDA assumed MCS's debts, agreed not to sell the company for 180 days, and gave the Ulloas a right of first refusal of stock GEDA wished to sell.

GEDA found a buyer for MCS within the 180 day period. Because the May 21 Agreement prevented it from selling the company during this period, GEDA entered into two Agreements with the Ulloas, on July 20, 1971 and August 4, 1971, which super

seded the May 21 Agreement. Under these Agreements, appellee Holmes bought 70% of the MCS stock. Holmes remains the majority shareholder of Western today. The Agreements also gave the Ulloas and other original shareholders two rights. First, they could buy their pro rata share of 15% of the stock for $1 per share (the "¶ 2 Option"). Second, five individuals (including David Ulloa) could buy another 3% of the stock each, at $4 per share, once MCS had paid its debts to GEDA (the "¶ 3 Option"). All parties to this appeal were parties to these agreements.

In 1971, David Ulloa exercised both his and Richard Ulloa's rights under ¶ 2. However, the Ulloas failed to pay for their stock, and MCS canceled their subscription in 1972 pursuant to the terms of the Agreement.

On February 28, 1972, the Ulloas filed suit against GEDA and Holmes, seeking to cancel the August 4 Agreement and to have all MCS stock returned to them. This was case number 24-72. On November 28, 1972, GEDA, Holmes, and MCS sued the Ulloas, claiming that they had issued watered stock to themselves during the time they controlled MCS. This was case number 197-72. The District Court decided against the Ulloas in both cases in 1977. We affirmed both decisions. See Guam *Economic Development Authority v. Ulloa*, 628 F.2d 1356 (9th Cir. 1980) (197-72); Ulloa v. *Guam Economic Development Authority*, 580 F.2d 952 (9th Cir. 1978) (24-72).

As a result of these decisions, Holmes, GEDA and MCS were awarded a $189,000 judgment against the Ulloas for watered stock.[1] After the Ulloas failed to pay, the district court issued a writ of execution on March 27, 1979. Pursuant to that writ, the federal marshal levied "any and all contract rights" David Ulloa had pursuant to the August 4 agreement. These rights were sold (to Holmes) at a judicial sale on April 12, 1979. David Ulloa did not appeal the execution, levy, or sale. Further efforts to enforce the judgment continued until 1989.[2]

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[1]Postjudgment interest had increased that figure to over $300,000 by 1989.

[2]We held that Western Systems could continue to enforce the judgment in *Guam Economic Development Authority v. Ulloa*, 841 F.2d 990 (9th Cir. 1988).

On December 5, 1989, the parties settled the claim against the Ulloas for $238,000. That same day, the Ulloas filed two suits in Guam Superior Court against Western Systems. The first, CV 1223-89, seeks rights to 30% of MCS (now Western) stock pursuant to the August 4, 1971 agreement. The second, CV 1224-89, asks the Guam Superior Court to declare null and void the March 27, 1979 federal court order of execution, levy and sale of David Ulloa's contract rights.

Western and Holmes promptly filed a petition in the United States District Court seeking to enjoin the Guam court suits. The district court granted the injunction, and in addition awarded $28,117.06 in fees and costs to Western as sanctions for the Ulloas' bad faith in filing the lawsuits. The Ulloas appealed the injunction (90-15732) and the sanctions (91-15110). These appeals are consolidated before this Court.

STANDARD OF REVIEW

District court injunctions are normally reviewed only for an abuse of discretion. *Multnomah Legal Serv. Workers Union v. Legal Services Corp.*, 936 F.2d 1547, 1552 (9th Cir. 1991). However, applying an erroneous legal standard is an abuse of discretion. *Golden v. Pacific Maritime Ass'n*, 786 F.2d 1425, 1426-27 (9th Cir. 1986), *as amended* 40 Fair Emp. Prac. Cases (BNA) 1500, 1501 (9th Cir. 1986). The question whether the district court had the power to issue the injunction is therefore reviewed de novo, while its decision to exercise that power is reviewed for an abuse of discretion. *See Lou v. Belzberg*, 834 F.2d 730, 733-34 (9th Cir. 1987), *cert. denied* 485 U.S. 993 (1988).

Similarly, "an appellate court should apply an abuse-of-discretion standard in reviewing all aspects of a district court's Rule 11 determination." *Cooter & Gell Co. v. Hartmarx Corp.*, 110 S. Ct. 2447, 2461 (1990). Failure to apply a correct legal standard constitutes an abuse of discretion. *Id.*

DISCUSSION

1. The Relitigation Exception to the Anti-Injunction Act

The two suits filed in Guam territorial court sought three basic kinds of relief. First, both David and Richard Ulloa claimed that they should have been offered the stock of other MCS shareholders who did not exercise their rights under ¶ 2 of the August 4, 1971 Agreement.[3] Second, David Ulloa claims that he should have been offered 3 % of MCS stock pursuant to ¶ 3 when MCS repaid its debt to GEDA in full.[4] Finally, David Ulloa seeks to have the Guam Superior Court declare null and void the federal court execution, levy and sale of any and all contract rights he possessed by virtue of the August 4 Agreement.

The Anti-Injunction Act, 28 U.S.C. § 2283, provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

The Act reflects fundamental principles of equity, comity, and federalism which normally counsel against federal interference with state judicial proceedings.[5] Exceptions to the Act are to be strictly construed. *Choo v. Exxon Corp.*, 486 U.S. 146 (1988).

[1] The key exception in this case is the final one, authorizing a federal court to issue injunctions to "protect or effectuate its judgments" (the "relitigation exception"). The parties do vigorous battle over the scope of this exception. Western contends that the exception applies whenever res judicata would bar relitigation of a

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[3]Paragraph 2 provides: "In the event that any of the shareholders indicates that he does not desire to purchase the shares or should default in payment, then such shares will be offered to the remaining former stockholders on the above pro rata basis."

[4]Paragraph 3 provides: "The remaining 15% of the stock of MCS held by GEDA shall be made available for sale to [David Ulloa, Holmes, and 3 others], in equal proportions,...provided however, that the said shares shall not be so made available until the MCS debt to GEDA...is repaid in full."

[5]Guam is not a state. However, the principles of federalism which underlie federal-state judicial relations apply equally to federal-Guamanian relations. 48 U.S.C. § 1424-2; *Guam v. Yang*, 850 F.2d 507, 510 (9th Cir. 1988 (en banc).

claim. Res judicata bars both claims actually litigated and those that arise from the same transaction and *could have been* litigated in a prior proceeding. **Restatement (Second) Judgments** §24(1). The Ulloas, on the other hand, argue that section 2283 allows federal courts to enjoin relitigation only of issues *actually litigated* in the federal proceeding. The Supreme Court has in the past expressly refused to decide this question. *See Parsons Steel v. First Alabama Bank*, 474 U.S. 518, 526 n.4 (1986).

As to David Ulloa, resolution of this debate does not matter. All his rights under the August 4 Agreement were extinguished by judicial sale on April 12, 1979. Both the order of sale and the order confirming sale are final orders from which appeal may be taken under 28 U.S.C. § 1291. *See Citibank v. Data Lease Financial Corp.*, 645 F.2d 333, 337 (5th Cir. Unit B 1981). David Ulloa could have appealed the sale of his contract rights, but chose not to do so. His rights were "actually litigated" in 1979 for § 2283 purposes. *See* **C. Wright, A. Miller & E. Cooper** § 4226, at 549-50 (1988) (order is a judgment within the relitigation exception if it is appealable as of right).

Further, David Ulloa asked the Guam court to declare the federal order "null and void." State courts have no power to void federal court decrees. A federal court may enjoin such impermissible collateral attacks on federal judgments. *See Williams Natural Gas Co. v. Oklahoma City*, 890 F.2d 255, 264 (10th Cir. 1989) (error *not* to enjoin collateral attack by state court on the validity of federal judgment), *cert. denied*, 110 S. Ct. 3236 (1990). Whether the standard is res judicata or "actually litigated" claims, therefore, the district court was correct to enjoin David Ulloa's claims. They have actually been litigated and decided in federal court.[6]

The same cannot be said, though, of Richard Ulloa's claim to

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[6]For similar reasons, we reject appellants' attempts to relitigate the levy and sale here by asserting that a court cannot levy contract rights under Guam law. Appellants had an opportunity to object to the levy in 1979, but failed to do so. They cannot raise the issue 12 years later, in federal or territorial court. *See Sidney v. Zah*, 718 F.2d 1453, 1457 (9th Cir. 1983) ("The Tribe did not appeal the1980 ruling. Thus, the merits of the 1980 injunction cannot be challenged in this appeal....")

refusal rights (and for fraud) under ¶ 2. While Western notes that the Ulloas obtained the stock ledger and other corporate records during discovery in case no. 197-72, and thus knew of their refusal rights and *could* have raised them, Richard Ulloa's refusal rights were not "actually litigated" in either case no. 24-72 or 197-72.[7] The validity of the injunction against his claims therefore depends on whether res judicata or "actually litigated" is the proper standard for applying the relitigation exception to § 2283.

For years the prevailing rule in the Ninth Circuit and elsewhere has been that section 2283 does not prohibit injunctions against any claim that would be barred by res judicata in federal court. *See DeNardo v. Murphy*, 781 F.2d 1345, 1348 (9th Cir.), *cert. denied* 476 U.S. 1111 (1986); *Midkiff v. Tom*, 725 F.2d 502, 504 (9th Cir. 1984) ("Federal courts may enjoin state court proceedings in order to protect the res judicata effect of their own judgments."), *rev'd on other grounds sub. nom Hawaii Housing Auth. v. Midkiff*, 467 U.S. 229 (1984).[8] While this court has sometimes required a "strong and unequivocal showing of relitigation" before applying section 2283, *see Bechtel Petroleum v. Webster*, 796 F.2d 252, 253-54 (9th Cir. 1986), *cert. dismissed*, 481 U.S. 1065 (1987), as a rule we have applied the exception as long as defendants had a full and fair *opportunity* to litigate the issue in the prior proceeding. *Golden v. Pacific Maritime Assn.*, 786 F.2d at 1427-28.

The continuing vitality of this rule was thrown into doubt by the Supreme Court's 1988 decision in *Choo v. Exxon Corp.*, 486 U.S. 140 (1988). In *Choo*, a federal court in Texas had dismissed an

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[7]The district court in case no. 24-72 also held that the Ulloas would be barred by unclean hands and estoppel from seeking to have a constructive trust imposed on MCS for entire value of the corporation. These equitable doctrines were not and could not be used to bar a suit for damages for breach of contract.

[8]*Accord Silcox v. United Trucking Serv.*, 687 F. 2d 848, 851-52 (6th Cir. 1982); *CCMS Pub Co. v. Dooley-Maloof, Inc.*, 645 F.2d 33, 38 (10th Cir. 1981); *Browning Debenture Holders Comm. v. DASA Corp.*, 605 F.2d 35, 38-39 (2nd Cir. 1978); *Samuel C. Ennis & Co. v. Woodmar Realty Co.*, 542 F.2d 45, 49 (7th Cir. 1976) *cert. denied* 429 U.S. 1096 (1977) *BGW Assoc. v. Valley Broadcasting Co.*, 532 F. Supp. 1115, 1117 (S.D.N.Y. 1982) *Contra Delta Air Lines; v. McCoy Restaurants*, 7098 F.2d 582, 586 (11th Cir. 1983).

admiralty claim on forum non conveniens grounds, concluding that Singapore was the appropriate place to file suit. When the plaintiffs refiled in Texas state court, the federal court enjoined the action. The Supreme Court reversed, reasoning that Texas state courts might apply different forum non conveniens rules than do the federal courts. *Id.* at 148-49. In dictum,[9] the Court said that "an essential prerequisite for applying the relitigation exception is that the claims or issues which the federal injunction insulates from litigation in state proceedings actually have been decided by the federal court. Moreover,...this prerequisite is strict and narrow." *Id.* at 148.[10]

In the wake of *Choo*, five circuits have concluded that the relitigation exception is now limited to issues actually litigated by the federal court. *See In re G.S.F. Corp.*, 938 F.2d 1467, 1478 (1st Cir. 1991) (applying section 2283 principles by analogy to bankruptcy case); *Farias v. Bexar County Board of Trustees*, 925 F.2d 866, 879-80 (5th Cir.) ("under *Chick Kam Choo*, what looks like the same rodeo in a different arena is really a different rodeo for relitigation exception purposes"), *cert. denied*, 112 S. Ct. 193 (1991); *LCS Serv. v. Hamrick*, 925 F.2d 745, 749-50 (4th Cir. 1991) (scope of section 2283 is less than res judicata; court does not mention "actually litigated" test); *American Town Center v. Hall 83 Associates*, 912 F.2d 104, 112 n.2 (6th Cir. 1990); *Nationwide Mut. Ins. Co. v. Burke*, 897 F.2d 734, 737-38 (4th Cir. 1990); *Staffer v. Bouchard Transp. Co.*, 878 F.2d 638, 642-44 (2nd Cir. 1989); *De Cosme v. Sea Containers, Ltd.*, 874 F.2d 66, 68 (1st Cir. 1989); *Murray v. Nat'l Broadcasting Co.*, 718 F. Supp. 249, 251 (S.D.N.Y. 1989) (enjoining only those claims that were actually litigated).

This court has considered the impact of *Choo* only once, in *Zipfel v. Halliburton Co.*, 861 F.2d 565, 568-70 (9th Cir. 1988) *(Zipfel II)*. *Zipfel* was a close factual analogue to *Choo*. We had

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[9]In the case before the Supreme Court, the parties *could not have* litigated the Texas state rules of forum non conveniens in federal court. The question this court faces was therefore not before the Supreme Court

[10]The Court relied on *Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U.S. 281, 287 (1970), a case which at best provides only inferential support for this proposition.

decided before *Choo* that a federal court could not enjoin state proceedings on forum non conveniens grounds, since the state might apply a different law of forum non conveniens and defendants would have no opportunity to argue it. *See Zipfel v. Halliburton Co.*, 832 F.2d 1477, 1488 (9th Cir. 1988), *cert. denied* 486 U.S. 1054 (1988) *(Zipfel I)*. *Choo* reached the same conclusion.

[2] After *Choo* was decided, this court recalled the mandate in *Zipfel I*. We issued a revised opinion in which we *broadened* the scope of the injunction permissible under section 2283. We read *Choo* as holding an injunction permissible where a prior federal decision necessarily precludes a certain result, even if that result was not itself actually litigated. *Zipfel II*, 861 F.2d at 570. *Zipfel II* did not directly decide, however, whether *Choo* limited the scope of the relitigation exception to claims actually litigated in federal court. We face that question here for the first time.[11]

[3] We disagree with those Circuits which have concluded that the relitigation exception is limited to claims actually litigated in a prior court proceeding. As the Supreme Court noted in *Choo*, the relitigation exception is founded in the well-recognized concepts of res judicata and collateral estoppel. 486 U.S. at 147. To read *Choo* as the other Circuits have, however, would in essence be to read res judicata entirely out of section 2283. Any claim which was actually litigated by the parties in a prior proceeding will be barred by collateral estoppel ("issue preclusion"), without any need to rely on res judicata ("claim preclusion"). This result seems to us to be contrary to the purposes of section 2283, as stated by the Supreme Court in *Choo*.

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[11]Two other cases have touched on this issue, but neither case resolved it. In *Merle Norman Cosmetics, Inc. v. Victa*, 936 F.2d 466, 468 (9th Cir. 1991), we found it unnecessary to decide whether *Choo* limited the scope of the litigation exception because we found that the district court was within its discretion in refusing to grant an injunction, regardless of the appropriate legal standard. And in *Amwest Mortgage Corp. v. Grady*, 925 F.2d 1162, 1164-65 (9th Cir. 1991), we relied on pre-*Choo* cases in concluding that the relitigation exception extended to all claims which the defendant had a "full and fair opportunity" to litigate. However, *Amwest* did not cite or discuss *Choo*.

We are therefore in agreement with Wright, Miller and Cooper. Criticizing the Second Circuit's reading of *Choo* in *Staffer*, they said:

> This decision seems unduly restrictive. The Chick Kam Choo opinion is ambiguous and does not show that a distinction between claim preclusion and issue preclusion was really considered or intended. If the effects of a judgment are to be enforced by injunction, claim preclusion is often as good a candidate as is issue preclusion. Indeed the Staffer case involves nonmutual issue preclusion and seems a weaker candidate for an injunction than many claim preclusion cases would be.

17 **C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure** § 4226, at 48 n.121 (1991 Supp). See also *Royal Ins. Co. of America v. Quinn-L Capital Corp.*, 759 F. Supp. 1216, 1233 n.19 (N.D. Tex. 1990) (*Choo* was "ambiguous"; majority interpretation "seems unduly restrictive").

The problems with the "actually litigated" formulation of the relitigation exception are particularly evident in this case. This case began twenty years ago. It was litigated for seventeen years in the United States District Court for the District of Guam, and was appealed to this Circuit no less than four times. One hour after the federal case was settled, the Ulloas filed suit in Guam territorial court. The issues raised in that suit arose from the same contracts and factual circumstances which had been litigated in federal court for the past seventeen years. The federal court was far more familiar with the issues presented than the Guam court could have been. Furthermore, the preclusion issues facing the Guam court were issues of federal law.[12] Under the compelling circumstances of this case, we conclude that the principles announced in *Choo* are not disserved by the district court's injunction. We therefore conclude that the relitigation exception to section 2283 allows the district court to enjoin the Guam litigation on the ground that it is barred by res judicata.

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[12]The res judicata effect of federal court judgments is a matter of federal law. *Robi v. Five Platters*, 838 F.2d 318, 322 (9th Cir. 1988).

[4] Res judicata sweeps more broadly than merely issues or claims that were actually litigated in a prior proceeding. The prior judgment is conclusive not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. *Nevada v. United States*, 463 U.S. 110, 130 (1983); *accord Sidney v. Zah*, 718 F.2d 1453, 1458 (9th Cir. 1983). David Ulloa's claims, which were actually litigated in federal court, are clearly barred under the principle of res judicata. The only question is whether Richard Ulloa's claim for first refusal rights is also barred.

[5] The test for whether a subsequent action is barred is whether it arises from the same "transaction, or series of transactions" as the original action. **Restatement (Second) Judgments** § 24(1) (cited with approval in *Nevada*, 463 U.S. at 130-31 n.12). Whether two events are part of the same transaction or series depends on whether they are related to the same set of facts and whether they could conveniently be tried together. **Restatement** § 24(2).

The Ulloas' claim in case no. 24-72 was for the right to repurchase *all* shares of MCS (presumably pursuant to the May 24 agreement). Viewed in this light, Richard Ulloa's right to repurchase some shares of MCS asserted in case no. 1223-89 seems part of the same recovery sought in case no. 24-72. Different theories supporting the same claim for relief must be brought in the initial action. *See* **Restatement** § 25, comment d ("a plaintiff sometimes attempts another action seeking the same or approximately the same relief but adducing a different substantive law premise or ground. This does not constitute the presentation of a new claim...")

[6] Richard Ulloa contends that he did not know until recently that the rights of first refusal had not been exercised by the other shareholders, and that he therefore could not have asserted those rights in the 1972 proceeding. Ignorance of a party does not, however, avoid the bar of res judicata unless the ignorance was caused by the misrepresentation or concealment of the opposing party. **Restatement (Second) Judgments** § 26 *comment j.*

[7] Even if ignorance were sufficient to avoid the bar, that fact would not aid the Ulloas. Evidence was presented during the federal litigation concerning which stockholders had exercised their rights to purchase MCS stock under ¶ 2. It therefore appears that the Ulloas were on notice of their potential claim for rights of first refusal. Moreover, claims arising from those rights are part of the same "transaction" that was litigated in federal court, and are consequently within the bar of res judicata. Thus, the injunction properly included those claims.

2. Equitable Requirements

[8] The Ulloas raise three additional objections to the injunction based on traditional principles of equity. First, they contend that the injunction is overbroad because it includes claims assigned to the Ulloas by other shareholders. Both Western's counsel and the district court expressly noted that those claims were not before the court, and were not encompassed within its order. The Ulloas' objection is based solely on what they argue is a possible reading of the district court's order. The district court enjoined the Ulloas from "pursuing the claims asserted by them, *individually*, in the two cases filed in Guam Superior Court." (emphasis added). Reading the order together with the opinion, which states that the assigned claims "were not addressed in the Petition for Injunction, and are not addressed in this opinion," we conclude that the injunction does not apply to the claims of other shareholders and is not overbroad.

[9] Second, the Ulloas contend that the principles of *Younger v. Harris*, 401 U.S. 37 (1971), should preclude injunctive relief here. *Younger*'s "equitable restraint" doctrine, like section 2283, is based in principles of equity, comity, and federalism. While the *Younger* doctrine has been applied to civil proceedings, such applications have been limited to quasi-criminal proceedings, *Juidice v. Vail*, 430 U.S. 327, 335-36 (1977), or to cases in which the state has a strong interest in enforcing its judgments, *Pennzoil Co. v. Texaco Co.*, 481 U.S. 1, 12-14 (1987). Appellants have cited no case applying *Younger* absent any such state interest. Guam has no such interest here, since there is no significant territorial involvement and no territorial judgment to enforce.

[10] Finally, the Ulloas claim that the injunction was inappropriate because Western would suffer no "irreparable injury" by having to bring its res judicata defenses in Guam court. It is true that a showing of irreparable injury is required for a *preliminary* injunction to issue, and no such showing has been made here. However, "when actual success on the merits is shown, the inquiry is over and a party is entitled to relief as a matter of law irrespective of the amount of irreparable injury which may be shown." *Multnomah Legal Serv. Workers Union v. Legal Serv. Corp.*, 936 F.2d 1547, 1553 (9th Cir. 1991) (quoting *Sierra Club v. Penfold*, 857 F.2d 1307, 1318 n.16 (9th Cir. 1988)). In this case, the district court issued a permanent injunction after a trial on the merits. The cases appellants cite are inapposite, as they involve either preliminary relief or the separate "irreparable injury" requirement of *Younger v. Harris*, 401 U.S. 37 (1971). Injunctive relief was therefore appropriate under traditional principles of equity.

3. Sanctions

The district court awarded sanctions to Western in the form of attorneys' fees and costs. The court indicated that sanctions were appropriate because the Guam suits were vexatious, harassing, and filed in bad faith. The court did not explicitly set forth the basis for its fee award. The Ulloas challenge the award of sanctions on multiple grounds.

First, the Ulloas claim that the district court's failure to set forth the underlying basis of the award denied them fair notice and opportunity for a hearing, and therefore mandates reversal of the award. The Ulloas rely on *Insurance Benefit Admins. v. Martin*, 871 F.2d 1354, 1363 (7th Cir. 1989) to support this proposition. *Martin* involved several conflicting claims of statutory authority for sanctions, some of which could support sanctions and others of which could not. The court concluded that the district court's failure to specify the basis for its award made appellate review impossible, and it remanded the claim.

[11] No such problem appears here. Appellees urge this Court to uphold the sanctions as an exercise of the district court's traditional

equitable powers. Appellants were clearly on notice of this basis for sanctions, as they briefed it extensively before this court. They also submitted a written brief on the issue to the district court. In addition, the district court judge clearly set forth the reasons he believed sanctions to be appropriate.

[12] The Ulloas contend that sanctions are not available under the "inherent powers" of the district court, because those powers were preempted or at least subsumed by Fed. R. Civ. P. 11. The Supreme Court explicitly rejected this theory last year in *Chambers v. Nasco, Inc.*, 111 S. Ct. 2123, 2134 (1991). The Court held that courts retain the inherent power to sanction bad faith conduct during litigation, and that this power exists independent of Rule 11.

The Ulloas next argue that the district court impermissibly sanctioned them for conduct — the filing of the Guam Superior Court cases — which occurred not in federal court, but in Guam court. Here, again, *Chambers v. Nasco, Inc.* is fatal to their contention. There the Supreme Court rejected a challenge to the imposition of sanctions "for conduct before other tribunals". *Id.* at 2139. The Court held that "[a]s long as a party receives an appropriate hearing,...the party may be sanctioned for abuses of process occurring beyond the courtroom...." *Id.*

The next point raised by the Ulloas has merit, however. It is that they never received an appropriate hearing, *id.*, and had no proper opportunity in the district court to contest the questions of bad faith and the amount of the sanctions. Our review of the record leads us to agree.

The posture of this case is unusual. The district court granted attorneys' fees at the same time that it granted the injunction. It ordered appellees to file an accounting of their costs and expenses. They did so. On August 16, 1990, the court asked counsel for the Ulloas to discuss the matter while counsel was in court on another matter. On the basis of this "hearing", which fills less than two pages in the record, the court awarded sanctions on September 13, 1990. The next day, the court accepted the Ulloas' brief on attorneys' fees, but treated it as a motion for reconsideration and

refused to allow the Ulloas to raise many of the objections that they present to this court.

[13] On this record, we conclude that the Ulloas were not afforded sufficient notice nor given an adequate hearing at which to contest the proposed sanctions. *Cf. Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767 (1980)("sanctions...should not be assessed lightly or without fair notice and an opportunity for a hearing on the record.") We therefore vacate the award of sanctions and remand to the district court for a hearing on the appropriateness and the amount of the sanctions. In light of our remand, we do not reach the other challenges to the sanctions presented by the Ulloas.

Finally, appellees seek further sanctions on appeal, pursuant to Fed. R. App. P. 38. Rule 38 provides that "[i]f a court of appeals shall determine that an appeal is frivolous, it may award just damages." An appeal is frivolous if the result is obvious and [appellant's] arguments are wholly without merit. *Scott v. Younger*, 739 F.2d 1464, 1467 (9th Cir. 1984). The Ulloas presented this court with an unsettled issue of law with regard to the Anti-Injunction Act, and the result we reach today is contrary to that reached by other circuits that have considered the issue. The challenge to the imposition of sanctions for lack of a proper hearing was meritorious. The results in this case were therefore far from obvious. We accordingly deny the request for sanctions on appeal.

CONCLUSION

The injunction against further proceedings in the courts of Guam is affirmed. The award of sanctions against the Ulloas is vacated, and the case is remanded to the district court for a hearing to determine the propriety and amount of sanctions. Appellees shall recover their costs on this appeal. AFFIRMED IN PART; VACATED IN PART, and REMANDED.

IN THE UNITED STATES DISTRICT COURT
FOR THE TERRITORY OF GUAM

WESTERN SYSTEMS, INC. and LEE M. HOLMES, *Petitioners,* *vs.* DAVID J. ULLOA and RICHARD ULLOA, *Respondents.*	Civil Case No. 197-72 NOTICE OF RULING AND ORDER GRANTING PETITIONERS' MOTION TO STAY PROCEEDINGS

Filed May 11, 1990

INTRODUCTION

On April 3, 1990, the court held an evidentiary hearing and heard oral argument on the Petition for Injunction filed March 1, 1990, by Western Systems, Inc. ("WSI") and Lee M. Holmes (collectively referred to as "Petitioners"). WSI is a Guam corporation which was previously named Marianas Communication Systems, Inc. ("MCS") and Guam Cable TV. Holmes has been a shareholder of WSI since August, 1971, and WSI president since March, 1972.

The petition sought a permanent injunction against David and Richard Ulloa (collectively referred to as "the Ulloas" and "Respondents") from prosecuting their claims in two cases filed in the Guam Superior Court, Civil Case No. 1223-89, *Ulloa v. Western Systems, Inc.*, and Civil Case No. 1224-89, *Ulloa v. Holmes* (collectively referred to as the "territorial suits").

David Ulloa is the former MCS majority shareholder, president and general manager. Richard Ulloa, also a former MCS shareholder, is David Ulloa's brother.

In Guam Superior Court Civil Case No. 1223-89 ("CV 1223-89"), as amended, the Ulloas allege that they were denied "rights of first refusal" to MCS shares granted in contracts signed in 1971, and that they were denied the opportunity to buy MCS stock at $1 per share; David Ulloa also claims that he was denied the right to

purchase certain MCS stock at $4 per share. The MCS stock purchase claims are based on identical factual contentions, and are set forth in seven different causes of action.

In Guam Superior Court Civil Case No. 1224-89 (CV 1224-89), David Ulloa seeks to "void" a 1979 judicial sale, despite the approval of the sale by this court in the federal action underlying the present proceedings. The underlying action, entitled *Guam Economic Development Authority v. Ulloa*, was assigned Civil Case No. 197-72.

WSI and Holmes filed answers in the territorial suits, and initiated the present proceedings by filing their Petition for Injunction. These proceedings, entitled *Western Systems, Inc. and Lee M. Holmes v. David J. Ulloa and Richard Ulloa*, were also assigned Civil Case No. 197-72.

The Ulloas, on March 8, 1990, filed a motion in Guam Superior Court to amend their complaint in CV 1223-89. The motion, granted on March 30, 1990, added to their complaint claims asserted by David Ulloa as assignee of former MCS shareholders. The claims were not addressed in the Petition for Injunction, and are not addressed in this opinion.

During the April 3, 1990, hearing, WSI and Holmes were represented by attorneys Michael J. Yoshii and Vernon Char. The Ulloas were represented by attorney Segundo Unpingco.

FACTS

A history of the eighteen year *Ulloa* federal litigation is required to place the territorial suits in context. This history is taken mainly from the pleadings and decisions of this Court and the Ninth Circuit Court, and from testimony, admitted as evidence during the April 3, 1990, hearing. The principal decision, resolving a lawsuit initiated by the Ulloas and others, is *Cruz v. Guam Economic Development Authority*, Civil Case No. 24-72, a 34-page opinion written by Judge Cristobal C. Duenas and filed in this court on February 16, 1977. The relevant facts are taken mainly from his February 16, 1977, Order.

A. The 1971 Corporate Reorganization of Guam Cable TV.

The Ulloas are former managers and shareholders of MCS. Their efforts at running the company were unsuccessful. On May 21, 1971, in an effort to avoid bankruptcy, all of the shareholders, including the Ulloas, sold their stock to the Guam Economic Development Authority ("GEDA"). Each shareholder was paid $1.00 for their stock. They retained a "collective" right of first refusal if GEDA resold the stock, but were required to repay outstanding GEDA loans totalling $421,000. At the time, David Ulloa was MCS general manager.

On July 14, 1971, Holmes made a proposal to purchase 70% of MCS stock from GEDA. After extensive negotiations, the Ulloas and GEDA entered into an agreement dated July 20, 1971 ("the July 20th agreement"). The July 20th agreement provided that "the rights of the [Ulloas] to repurchase from GEDA their formerly owned shares of MCS Stock is to be *fully cancelled* and of *no force and effect*." The agreement gave both Ulloas an option to purchase their pro rata share of 15% of MCS stock for $1 per share, and gave David Ulloa a separate option to purchase 3% (1/5th of 15%) of MCS stock at $4 per share "when the debt owed GEDA by MCS is repaid in full." The Ulloas, Holmes, and MCS signed the agreement.

On August 4, 1971, GEDA and Holmes signed an "Agreement For Sale of MCS Stock" ("the August 4th agreement"). David Ulloa signed as a witness. The August 4th agreement incorporated by reference the May 21st and July 20th agreements, which were attached as exhibits.

In paragraph 1 of the August 4th agreement, Holmes agreed to purchase 70% of MCS stock for $2 a share. In paragraph 2, MCS agreed to "make available" 15% of its stock to the former shareholders, including the Ulloas, for $1 a share. The terms of the offer were as follows:

> In the event that any of the stockholders indicates that he does not desire to purchase the shares or should default in payment, then such shares will be offered to the

> remaining former stockholders on the above *pro rata* basis, and then if not purchased, shall be offered to HOLMES. If not purchased by any of the above, they shall remain in the MCS Treasury for disposition at the discretion of the MCS Board of Directors. The purchase price for the said sales of stock will be the sum of ONE ($1.00) DOLLAR per share. The said former stockholders may pay cash for the said stock to be so purchased or, in the alternative, may pay FIFTY (50%) per cent down and the balance in ONE (1) year with interest of SIX (6%) percentum per annum. The stock certificates will be held by MCS as security for the remaining balance upon the said purchase price of the stock.

In paragraph 3, GEDA agreed to offer the 15% of MCS stock to 5 persons, including David Ulloa, for $4 a share (plus a 10% increase each year) when the MCS debt to GEDA was "repaid in full."

On July 27, 1971, David Ulloa signed a subscription agreement indicating that he wished to purchase 2,325 shares of MCS Stock for $1 a share. He agreed that "in the event that I do not purchase the shares, I understand that they may be made available to the other former shareholders." On August 5, 1971, David Ulloa signed a promissory note to pay $2,325 for his 2,325 shares. The note required him to pay $1,162.50 on or before October 5, 1971, and $1,162.50 on or before October 5, 1972. It also provided that the shares would be held as collateral:

> The said shares shall be held by MCS as collateral until fully paid. If default be made in the payment when due of any installment, the entire principal shall immediately become due and payable at the option of the holder of this note, without notice, and the shares shall become the property of MCS for disposition as determined by the MCS Board of Directors.

On September 16, 1971, David Ulloa made a $300 down payment toward the $2,325 purchase price for his 2,325 shares, less than the 50% down payment required by the August 4th agreement

and the promissory note. On April 28, 1972, he was notified of his failure to pay the amount due for the stock. He responded by visiting Holmes at the MCS office. When told he could not condition his purchase on a waiver of claims by MCS, he refused to pay the balance owed for the stock. On July 7, 1972, he was notified that his stock purchase contract was cancelled for non-payment.

On July 27, 1971, David Ulloa also signed a subscription agreement, on behalf of his brother Richard, subscribing to 570 MCS shares at $1 a share. On September 16, 1971, Richard paid $100 toward the stock purchase price of $570. On September 30, 1971, he paid another $200. He did not pay the balance due. MCS notified him of his default on August 17, 1972. He failed to pay and the stock purchase contract was cancelled.

Holmes contributed and raised substantial amounts of capital for MCS. As a result of his investment and management, MCS was stabilized and eventually was able to expand.

B. The Federal Litigation

On February 28, 1972, the Ulloas and others filed their *Cruz v. Guam Economic Development Authority ("Cruz v. GEDA")* suit in this court, naming as defendants GEDA and Holmes. The Ulloas alleged the August 4th agreement was breached by GEDA; that GEDA had "failed and refused to offer" shares to the Ulloas; and, that Holmes "at all times acted in bad faith and conspired" with GEDA to deprive the Ulloas of their shares. The Ulloas sought a constructive trust, an accounting, $15 million in damages, "and such other and further relief as is proper."

On November 28, 1972, GEDA, Holmes and MCS brought their *Guam Economic Development Authority v. Ulloa* ("CV 197-72") suit in this court, naming as defendants several former MCS shareholders, including the Ulloas, and seeking to collect unpaid stock subscriptions. The complaint specifically referred to the May 21st, July 20th, and August 4th agreements involving Holmes, Ulloa and Guam Cable TV. It alleged that the "warranties and representations of [the Ulloas] as set forth in said contracts...were false and

untrue." The Ulloas, in their January 25, 1973 Answer, alleged that Holmes and MCS "failed and refused to perform the conditions required by the [1971] contracts."

Throughout the CV 197-72 litigation, the Ulloas contended that Holmes and MCS had denied the Ulloas their rights of first refusal arising under the May, 1971, agreement. For example, in Answers to Interrogatories, the Ulloas claimed that "GEDA sold MCS stock to Holmes without first making it available to the original shareholders", and that "GEDA did not offer the referred to 'rights of first refusal' to the defendants."

On September 5, 1973, the Ulloas filed a request to Holmes and MCS to produce a number of MCS corporate records. These included "the stock transfer ledger of MCS."

The stock ledger was made available to the Ulloas during the CV 197-72 litigation. Thus, the Ulloas had the opportunity to inspect all stock transactions involving MCS between 1971 and 1973.

Cruz v. GEDA, the Ulloa's suit against GEDA and Holmes, went to trial before CV 197-72. On February 16, 1977, Judge Duenas' 34-page opinion was issued, deciding all claims against the Ulloas.

The Ulloas appealed, requesting that the Ninth Circuit Court "nullify the August 4, 1971 agreement of sale between GEDA, MCS, and Holmes." The Ninth Circuit addressed the May 21st, July 20th and August 4th contracts; confirmed that the Ulloas had waived their rights of first refusal, and that there was no fraud on the part of Holmes; and, affirmed on all grounds. *Ulloa v. GEDA*, 580 F.2d 952 (9th Cir. 1978).

CV 197-72, Holmes' and GEDA's suit against the Ulloas, went to trial in September, 1977. Following a jury verdict in the Ulloas' favor, a partial judgment notwithstanding the verdict was granted finding the Ulloas liable for watered stock. A $153,000 judgment was entered against David Ulloa and $36,000 judgment was entered against Richard Ulloa.

The Ulloas appealed. The Ninth Circuit Court, in a decision

without a published opinion, affirmed the trial court's decision. *Guam Economic Development Authority v. Ulloa*, 628 F.2d 1356 (9th Cir. 1980).

The Ulloas failed to pay the judgments. On March 27, 1979, this court issued an Alias Writ of Execution against David Ulloa in the amount of $153,000. On April 4, 1979, the United States marshal issued a Notice of Levy against David Ulloa. The marshal levied upon "any and all" contract rights of David Ulloa:

> TO: DAVID J. ULLOA
>
> PLEASE TAKE NOTICE that pursuant to the annexed Alias Writ of Execution, I hereby levy upon *any and all* contract rights which you have in, to or arising from that contract entitled "Agreement for Sale of MCS Stock" entered into between Guam Economic Development Authority, Marianas Communication System, Inc. and Lee M. Holmes, and dated August 4, 1971, including the following portion of the above-described Agreement:
>
> > "The remaining FIFTEEN (15%) per cent of the stock of MCS held by GEDA shall be made available for sale to each of the below listed former stockholders, and HOLMES, in equal proportions, for the sum of FOUR ($4.00) DOLLARS per share, provided however, that the said shares shall not be so made available until the MCS debt to GEDA, as mentioned in Paragraph 4, below, is repaid in full; and, provided further, that the purchase price of the said stock, so made available, shall increase in increments to be TEN (10%) per cent [per year] of the initial cost of said stock, that is, FOUR ($4.00) DOLLARS.

On April 12, 1979, the marshal conducted the judicial sale. The contract rights were sold to Holmes for $1,000. Ulloa did not appeal.

Efforts to collect the remainder of the judgment against Richard and David Ulloa continued for 10 years. On August 12, 1986, this court ruled that WSI could continue to enforce its judgment against the Ulloas.

The Ulloas appealed to the Ninth Circuit Court. The Ninth Circuit affirmed, holding that the judgment against the Ulloas could be enforced. *Guam Economic Development Authority v. Ulloa*, 841 F.2d 990 (9th Cir. 1988).

Upon remand, this court ordered the Ulloas to commence monthly payments on the judgment. They failed to appear at court hearings. Consequently, on August 25, 1989, an Order to Show Cause Re Contempt was issued. On September 8, 1989, an arrest warrant for the Ulloas was issued.

Ultimately, the parties agreed to a compromise settlement of $238,000. A satisfaction of judgment was entered on December 5, 1989.

Approximately *one hour* after the satisfaction of judgment was entered, the Ulloas filed the territorial suits in the Guam Superior Court, seeking to overturn the rulings of this court and the Ninth Circuit Court.

DISCUSSION

A federal court has jurisdiction to enjoin state (or territorial) court proceedings when an injunction is "necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (1978) ("§ 2283"). The All Writs Act, 28 U.S.C. § 1651 (1966), also provides in part that "all courts established by Act of Congress may issue all writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the usages and principles of law."

The power of a federal court to protect its judgments "is founded in the well recognized concepts of res judicata and collateral estoppel." *Chick Kam Choo v. Exxon Corporation*, 486 U.S. 140, 108 S.Ct. 1684, 100 L.Ed.2d 127, 134 (1988). The Ninth Circuit

has held that "[f]ederal courts may enjoin state court proceedings in order to protect the res judicata effect of their own judgments." *Midkiff v. Tom*, 752 F.2d 502, 504 (9th Cir. 1984). Successful federal court litigants are entitled to protection from repetitive claims filed by losing parties in local court:

> Such an injunction [under 28 U.S.C § 2283] is appropriate where a federal litigant has prevailed on the merits, yet is threatened with burdensome and repetitious relitigation of the same issues in a multiplicity of actions....The reason for the rule permitting such injunctions is to protect the party who has succeeded in the federal court against being put to the inconvenience and expense of relitigating the same issue and from being subject to the possibility of a contrary decision by the state court which would nullify or impair the effect of the federal judgment.

Id. at 504. (citations omitted).

In *First Alabama Bank of Montgomery v. Parsons Steel*, 825 F.2d 1475 (11th Cir. 1987), a steel company filed suit against a bank in federal court under the federal Bank Holding Company Act. A judgment notwithstanding the verdict was entered for the bank and affirmed on appeal. Subsequently, an amended complaint was filed in state court alleging that the bank's actions violated Article 9 of the UCC. The Eleventh Circuit, applying 28 U.S.C. § 2283, held that the UCC claims "*should have been raised* as pendent claims in the [federal] action and therefore were barred under res judicata principles." *Id.* at 1485 (emphasis added). The court approved a § 2283 injunction of the state court proceeding. *Id.*

Likewise, in *BGW Associates, Inc. v. Valley Broadcasting Company*, 532 F. Supp. 1115 (S.D.N.Y. 1982), the federal court enjoined a Nevada state court action which sought to relitigate a shareholder's suit. The court held that "when a party who has prevailed in federal court is subjected to multiple lawsuits on the same issues, injunctive relief may be granted to protect the federal court judgment". *Id.* at 1117 (citing 28 U.S.C. § 2283). The court enjoined state court litigation of all claims barred by res judicata:

> Moreover, any new issues or defenses to enforcement of the contract that appear to be raised in the Nevada court action are also barred by the doctrine of res judicata since such defenses and claims *might and should have been raised* in this district court's trial of the issues.

Id. (emphasis added).

"A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that *were or could have been* raised in that action." *Federated Department Stores Inc. v. Moitie*, 452 U.S. 394, 398, 101 S.Ct. 2424, 69 L.Ed.2d 103, 108 (1981) (emphasis added). The Supreme Court has emphasized the important policies behind the res judicata doctrine:

> This court has long recognized that public policy dictates that there be an end of litigation; that those who have contested an issue should be bound by the results of the contest, and that matters once tried shall be considered forever settled as between the parties.... We have stressed that the doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. *It is a rule of fundamental and substantial justice*, a public policy and a private peace, which will be cordially regarded and enforced by the courts.

Id., 452 U.S. at 401, 69 L.Ed.2d at 110-11 (emphasis added).

"Res judicata 'serves to protect adversaries from the expense and vexation attending multiple lawsuits, to conserve judicial resources, and to foster reliance on judicial action by minimizing the possibility of inconsistent decisions." *Americana Fabrics Inc. v. L & L Textiles Inc.*, 754 F.2d 1524, 1529 (9th Cir. 1985). Res judicata also "bars litigation of all matters which *could have been raised* in support of a cause of action previously litigated." *Sidney v. Zah*, 718 F.2d 1453, 1458 (9th Cir. 1983) (emphasis added). A plaintiff cannot circumvent this rule by artfully pleading his claim under different theories of recovery:

> Multiple claims do not arise solely because a number of different legal theories deriving from a specific incident are used to assert liability. The transaction remains unitary 'although the several legal theories depend on different shadings of the facts, or would emphasize different elements of the facts, or would call for different measures of liability or different kinds of relief.'

Gregory v. Chehi, 843 F.2d 111,117 (3rd Cir. 1988) (citing Restatement (Second) of Judgments § 24 (1982)).

Accordingly, if a plaintiff loses in federal court, he cannot simply change the name of his cause of action and relitigate the case in state court. *CCMS Publishing Company, Inc. v. Dooley-Maloof, Inc.* 645 F.2d 33, 38 (10th Cir. 1981) (28 U.S.C. § 2283 injunction issued to enjoin state court claim under a different theory of law but arising from the same transaction). Nor may a plaintiff avoid res judicata by raising new issues not included in the first case:

> When a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, *but as to any other admissible matter which might have been offered for that purpose.*

Land Services Inc. v. Gaudet, 414 U.S. 573, 579-580, 94 S.Ct. 806, 812, 39 L.Ed.2d 9 (1974) (emphasis added) (quoting *Cromwell v. County of Sac*, 94 U.S. 351, 352, 24 L.Ed. 195 (1876)).

In *Silcox v. United Trucking Service, Inc.*, 687 F.2d 848 (6th Cir. 1982), an attorney lost a motion for attorney's fees in a federal district court. He then sought his fees in a state court action, alleging that certain aspects of his claim were not litigated in the federal court. The federal court enjoined the state court proceeding under § 2283, holding that the attorney "cannot now complain that the matter was not fully litigated because he asserts that he did not take full advantage of his opportunity to litigate it." *Id.* at 852. The federal court held that the opportunity to raise all claims in the

federal court was enough for res judicata:

> It is clear that appellant's contract and quantum meruit claims in this case arise out of the same transaction or occurrence and seek recovery for the same injury, and that appellant could have brought both claims before the district court.... We, therefore, reject the argument of appellant that the district court abused its discretion in asserting ancillary jurisdiction over the attorney's fees issue, because that question should have been raised by appeal from the decision of the district court.

Id.

"Two claims are the same if they arise from the same transactions or events." *Brown v. Federated Department Stores Inc.*, 653 F.2d 1266, 1267 (9th Cir. 1981). The commonly accepted definition of a claim barred by res judicata provides:

> When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar... the claim extinguished include *all* rights of the plaintiff to remedies against the defendant with respect to all or any part of that *transaction, or series of connected transactions,* out of which the action arose.

Restatement (Second) of Judgments, § 24(1) (1982) (emphasis added).

In this case, the territorial suits filed by the Ulloas concern exactly the same "transaction or series of connected transactions" involved in previous federal court litigation: the 1971 corporate reorganization of Guam Cable TV, and the Ulloas' claims to stock under the August 4th agreement.

A. CV 1223-89 Raises the Same Claims Which Were Or Which Could Have Been Litigated Before.

According to the Ulloas, their claims in territorial suit CV 1223-89, involve "paragraphs 2 and 3 of the August 4, 1971 agreement,"

while the prior federal suits *Cruz v. GEDA* and CV 197-72, involved only "the provisions of paragraph *one* of the August 4, 1971 agreement."

In both *Cruz v. GEDA* and CV 197-72 the Ulloas argued that paragraph one of the August 4th agreement was invalid because it allowed Holmes to purchase 21,000 shares of MCS stock for $2.00 per share, stock the Ulloas had previously sold back to GEDA for $1.00. Although the Ulloas now claim the 1972 cases were "limited to the provisions under paragraph one of the August 4, 1971 agreement," it is clear from the record that the validity of the *entire* August 4th agreement was litigated in *Cruz v. GEDA* and CV 197-72.

For example, in their Supplemental Trial Memorandum, filed on December 16, 1975, the Ulloas stated:

> ...GEDA and Holmes were without lawful power to enter into the agreement of August 4, 1971 wherein GEDA purported to convey MCS to Holmes. Accordingly, if defendants were without lawful authority to enter into the August 4, 1971 agreement, *then the legal effect of said "agreement" is also a nullity*, and the parties are restored to status quo of the May 21, 1971 agreements.
>
> ...The July 20, 1971 agreement is therefore void for all purposes, *the August 4, 1971 agreement fails as a consequence*, and the parties should be returned to their status as of May 21, 1971.

After GEDA and Holmes prevailed in this court, the Ulloas asked the Ninth Circuit Court to declare the August 4th agreement a "nullity." The Ninth Circuit refused, and upheld the validity of the agreement. *Ulloa v. GEDA*, 580 F.2d at 960.

In CV 197-72, the Ulloas argued once again that they were denied rights of first refusal in the reorganization of Guam Cable TV. The Ninth Circuit Court once again rejected the argument.

That the territorial suits overlap with the prior federal court litigation is demonstrated by those discovery requests, propounded by the Ulloas, which pertain to Guam Cable TV documents. Although the requests were prepared by different attorneys, the documents requested during 1973, in the federal action CV 197-72, are virtually identical to those recently requested in territorial suit CV 1224-89:

1973 Request *(CV 197-72)*	1990 Request *(CV 1224-89)*
(2) Annual Statements of "The Companies" since 1969;	(m) All financial statements of MCS from date of incorporation to the present.
(3) All notices or communications sent to shareholders by "The Companies" since 1969;	(e) All correspondence by any of the defendants herein to any of the plaintiffs herein.
	(k) All correspondence between MCS and Lee Holmes, concerning Holmes' purchase and/or ownership of MCS stock, or MCS relations with GEDA.
(13) Profit and loss statements of "The Companies" since 1969.	(m) All financial statements of MCS from date of incorporation to the present.

To determine whether a single cause of action exists "the test is whether identical evidence will support the issues involved in both actions." *Thibodeau v. Foremost Ins. Co.*, 605 F. Supp. 653, 659 (N.D. Ind. 1985). The August 4th agreement was a single agreement. The claims made under paragraph 2 of the agreement are interwoven with the claims made under paragraph 1. As the Ulloas' discovery requests demonstrate, the facts and evidence are the same. Judicial economy and good sense dictate that the same agreement may not be litigated ad infinitum.

Even if the court were to accept the Ulloas' argument that they limited their claims in the federal suits, *Ulloa v. GEDA* and CV

197-72, to paragraph 1 of the August 4th contract, they would still be barred by res judicata. The Ulloas concede that res judicata "prevents litigation of all grounds for or defenses to, recovery that [was] previously available to the parties, *regardless of whether they were asserted or determined* in the prior proceeding." *Brown v. Felson*, 442 U.S. 127, 131, 99 S.Ct. 2205, 2209, 60 L.Ed.2d 767 (1979) (emphasis added).

Res judicata prohibits a plaintiff from suing first under one contract paragraph, then suing later under a second paragraph of the same contract. In *Thibodeau*, a plaintiff asserted claims for unpaid salary and abusive discharge arising under an employment contract. The court dismissed these claims on grounds of res judicata because the plaintiff, in a prior action, had claimed separate breaches of the same employment contract:

> ...as a general rule, *only one cause of action arises from the breach of a contract* and where an action is brought on a contract, *all claims arising thereunder and then due constitute an entire and indivisible cause of action and a judgment therein is a bar to any further action for any claims arising out of such breach.*

Thibodeau, 605 F. Supp. at 659 (citing 17 I.L.E. *Judgment* § 358, p. 399 [1959]) (emphasis added).

Here, as in *Thibodeau*, the Ulloas are barred from bringing separate suits for separate provisions of the same contract. They attempt to justify their eighteen year delay in suing under paragraph 2 of the August 4th contract, but do not refute that: they failed to pay for their $1 shares in 1972; they were given an opportunity to cure the failure, but did not do so; and, their $1 shares were cancelled *in 1972*. Despite their knowledge, during 1972, that their $1 share purchases were cancelled, they chose not to assert any claim for $1 shares under paragraph 2 of the August 4th agreement in either Civil No. 24-72 or 197-72.

Similarly, if either of the Ulloas felt entitled to receive 300 or more shares for the $300 paid in 1971, they could have made, and had a duty to make, those claims in either *Ulloa v. GEDA* or CV

197-72. For reasons unknown to the court, however, the Ulloas decided to limit their allegations to paragraph 1 of the agreement. Although their strategy was apparently unsuccessful, there is no doubt that the Ulloas received a full and fair *opportunity* to litigate their claims under paragraph 2 of the August 4th agreement.

The Ulloas have not demonstrated, in any manner, that they were precluded from asserting claims for $1 shares under paragraph 2 in either *Ulloa v. GEDA* or CV 197-72. If they felt their rights of first refusal were violated, they could and should have asserted claims in 1972, when their shares were cancelled. Through discovery, they received all stock records of MCS and had the opportunity to investigate fully their rights to stock not purchased by the other former stockholders.

Res judicata does not permit parties to sue ad infinitum for different paragraphs of a single contract. The final judgments in the federal suits, *Ulloa v. GEDA* and CV 197-72, disposed of all claims the Ulloas had under paragraph 2 of the August 4th agreement.

B. David-Ulloa's Option to Purchase $4 Shares Under Paragraph 3 Of The August 4th Agreement Has Been Litigated.

David Ulloa, the only Ulloa entitled to $4 shares under paragraph 3 of the August 4th agreement, contends that he could not have sued in 1972 because his option did not mature until the MCS loan from GEDA was repaid in early 1980. He maintains that his option, during 1972, was a "mere expectancy."

Options are more than mere expectancies. *See, Bennett Veneer Factors, Inc. v. Brewer*, 441 P.2d 128, 132 (Wash. 1968) (option agreements or rights of first refusal, when supported by valid consideration, are "complete, valid and binding" agreements); *Steel v. Eagle*, 483 P.2d 1063, 1067 (Kan. 1971) ("An option, when supported by consideration, is a contract to keep an offer open for a specified period of time."); 1A Corbin, *Contracts* § 261, p. 470 (1963) ("a right of first refusal is a contract right, enforceable by appropriate remedies, both legal and equitable").

Guam law provides that any type of personal property may be levied, including "shares and interests in any corporation":

> All goods, chattels, moneys, or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, are liable to execution. Shares and interest in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be levied upon or released from levy in like manner as like property may be attached or released from attachment.

Guam Code Civ. Pro. § 688 (1970). Guam contract rights do not vest solely upon breach of the contract. *Minot v. Charles Young Construction, Inc.*, 344 F.2d 671 (9th Cir. 1965). They vest upon execution of the contract, and can be reached by levy. *See, Coldren v. American Milling Research & Development Institute, Inc.*, 378 N.E.2d 870 (Ind. 1978) (contract rights levied and sold). The cases cited by the Ulloas deal only with contingent interests, not vested contract rights.

David Ulloa's option for $4 shares may have been inchoate until the GEDA loan was repaid, but it was a vested, existing contract right. This contract right was levied and sold in April, 1979, by order of this court. After the levy, David Ulloa had no other right to the $4 shares. He never appealed the judicial sale. His right to the $4 shares was actually litigated, and was decided against him.

David Ulloa now asks the Guam Superior Court to "void" the order of a federal court. His request, made ten years after the levy, is a direct assault on a federal court-approved judicial sale.

A territorial court cannot void a federal court order without violating the supremacy provisions of Articles IV and VI of the Constitution of the United States. 28 U.S.C. § 2283 was intended by Congress to allow federal courts to protect their judgments against precisely this type of collateral attack.

C. A 28 U.S.C. § 2283 Injunction Applies to Claims Which Could Have Been Litigated, Not Just Claims Actually Litigated.

The Ulloas cite *Chick Kam Choo v. Exxon Corporation*, 100 L.Ed. 2d at 134, for the proposition that § 2283 applies only to claims actually litigated in the federal court. *Chick Kam Choo*, however, is not so narrow:

> The relitigation exception was designed to permit a federal court to prevent state litigation of an issue that previously was presented to and decided by the federal court. It is founded in the well recognized concepts of *res judicata* and collateral estoppel.

108 S.Ct. at 1690.

In *Chick Kam Choo*, a federal court dismissed for lack of jurisdiction claims alleged under Singapore law arising from a Singapore maritime accident. The plaintiff, therefore, had no opportunity to assert in the federal court the claims premised on Singapore law.

The plaintiff next filed an action in a Texas state court which, under Texas law, had jurisdiction to hear all claims arising under foreign laws. Because the plaintiff had been unable to previously litigate in federal court his Singapore law claims, the U.S. Supreme Court held that § 2283 would not bar litigation of the Singapore law claims in the Texas state court. *Id.* at 1691.

The circumstances in the present case are entirely different from those addressed in *Chick Kam Choo*. The Ulloas had had an opportunity to litigate the validity of the August 4th agreement, and took advantage of that opportunity by participating, for eighteen years, in two federal lawsuits. Each of suits were tried, and each was appealed to the Ninth Circuit Court. This court and the Ninth Circuit upheld the validity of the August 4th agreement.

Although the Ulloas claims may have been focused on paragraph 1 of the agreement, they undoubtedly had the opportunity, at the time they asserted their claims, to sue for $1 shares under paragraph 2 of the agreement. They chose not to.

David Ulloa's claims to $4 shares under paragraph 3 of the agreement were litigated in 1979. They were sold by order of this court.

Under such circumstances, the applicable rule is that "federal courts may enjoin state court proceedings in order to protect the res judicata effect of their own judgments." *Midkiff v. Tom*, 752 F.2d 502, 504 (9th Cir. 1984); *see also, First Alabama Bank of Montgomery v. Parsons Steel*, 825 F.2d 1475, 1485 (11th Cir. 1987) (state court claims barred because they "should have been raised" in the federal case); *BGW Associates, Inc. v. Valley Broadcasting Company*, 532 F. Supp. 1115, 1118 (S.D. N.Y. 1982) (state court claims barred because they might and should have been raised in the federal court litigation).

The Ulloas have cited authority recognizing the broad scope of res judicata. For example, they cite *Brown v. Felson*, in which the Supreme Court held that "[r]es judicata prevents litigation of all grounds for, or defenses to, recovery that [was] previously *available* to the parties, regardless of whether they were asserted or determined in the prior proceeding." 442 U.S. at 131, 99 S.Ct. at 2209; *see also, Robi v. Five Platters, Inc.*, 838 F.2d 318, 322 (9th Cir. 1988).

To restrict § 2283 injunctions to issues that were actually decided in federal courts would illogically limit the finality of federal court judgments. Under the Ulloas' theory, claims which should have been litigated in prior federal proceedings would be barred by res judicata from subsequent *federal* litigation, but could thereafter be asserted in *state* or *territorial* court litigation. The Ulloas, or other claimants, could then forum shop and litigate "test" cases by splitting their causes of action.

Chick Kam Choo merely permitted a state court to assess claims unavailable to litigants in a federal forum. It did not hold that state or territorial courts are empowered to re-decide issues that *were* raised, *could have been* raised, and *should have been* raised in prior federal court proceedings.

D. Availability of Sanctions.

"An award of attorneys fees [is] an appropriate deterrent to future frivolous suits". *Cook v. Peter Kiewit Sons Co.*, 775 F.2d 1030, 1037 (9th Cir. 1985) (quoting *Callow v. Amerace Corp.*, 681 F.2d 1242, 1243 (9th Cir. 1982)). In this case, sanctions are appropriate.

Petitioners, WSI and Holmes, have incurred unnecessary legal fees and expenses to respond to the territorial suits. The suits had no merit whatsoever, and were obviously filed for harassment. Eighteen years of federal court litigation had barely ended when the suits were filed.

Such blatant disregard for the final judgments of this court and the Ninth Circuit Court shall not go unsanctioned. The courtroom is not the place for personal vendettas. Sanctions are imposed to compensate parties -- like Petitioners -- who are compelled to incur unwarranted expense, and to deter parties -- like Respondents -- who initiate and maintain harassing, vexatious, legal proceedings.

CONCLUSION

Based on the circumstances and authorities cited above, the court concludes and ORDERS that:

1. Respondents are permanently enjoined from prosecuting or otherwise pursuing the claims asserted by them, individually, in the two cases filed in Guam Superior Court: Civil Case No. 1223-89, *Ulloa v. Western Systems, Inc.*; and, Civil Case No. 1224-89, *Ulloa v. Holmes;*

2. Respondents are permanently enjoined from initiating or maintaining any lawsuits asserting any claims arising out of the claims which were or could have been asserted in the underlying federal lawsuit, Civil Case No. 197-72, *Guam Economic Development Authority v. Ulloa*, and in the related federal lawsuit, Civil Case No. 24-72, *Cruz v. Guam Economic Development Authority;*

3. Petitioners shall prepare for the court a detailed account of all attorneys' fees and costs Petitioners have incurred due to the filing of the two cases filed in Guam Superior Court: Civil Case No. 1223-89, *Ulloa v. Western Systems, Inc.;* and, Civil Case No. 1224-89, *Ulloa v. Holmes;* and,

4. Upon receipt of Petitioners' accounting, the court shall issue an order specifying the payment owed Petitioners by Respondents, and the payment deadline.

IT IS SO ORDERED.

Dated this 10th day of May, 1990.

Alex R. Munson
United States District Judge

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Western Systems, Inc.; Lee M. Holmes,

Plaintiffs-Appellees,

v.

Richard F. Ulloa; David J. Ulloa,

Defendants-Appellants.

Nos. 90-15732; 91-15110

USDC No. CV 197-75-ARM

ORDER

Filed June 18, 1992

Before: ALARCON, D.W. NELSON and CANBY, Circuit Judges.

The panel has voted to deny Defendants-Appellants' petition for rehearing and to reject the suggesting for rehearing en banc.

The full court was advised of the suggestion for rehearing en banc. An active judge requested a vote on whether to rehear the matter en banc. The matter failed to receive a majority of the votes of the nonrecused active judges in favor of en banc consideration. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.